

COPY

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SUPERIOR COURT OF WASHINGTON

IN AND FOR KING COUNTY

- - - - - X

STATE OF WASHINGTON, :

Plaintiff, :

v. : No. 96-2-15056-8SEA

AMERICAN TOBACCO, et al., :

Defendants. :

- - - - - X

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

- - - - - X

Coordination Proceeding Special : No. JCCP 4041

Title (Rule 1550(b)) :

TOBACCO CASES. : San Diego

Including Actions: : Superior Court

Cordova v. Liggett Group, Inc. : No. 651824

Davis v. R.J. Reynolds Tobacco Co.: No. 706458

County of Los Angeles v. R.J. : No. 707651

Reynolds Tobacco Co. :

- - - - - X

Washington, D.C.

Friday, October 23, 1998

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO

1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 Continued videotaped deposition of JOHN
2 BOWEN ROSS, JR., a witness herein, called for
3 examination by counsel for Plaintiffs in the
4 above-entitled matter, pursuant to agreement, the
5 witness being previously duly sworn, taken at the
6 offices of Shook, Hardy & Bacon, LLP, Suite 900,
7 1850 K Street, N.W., Washington, D.C.,
8 20006-2244, at 9:59 a.m., Friday, October 23,
9 1998, and the proceedings being taken down by
10 Stenotype by JAN A. WILLIAMS, RPR, and
11 transcribed under her direction.

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19 ALSO PRESENT:

20 DOUGLAS KLOTE

21 RAYMOND HEER, Videographer

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3 JOHN BOWEN ROSS, JR. DEFENDANT R.J.

4 REYNOLDS TOBACCO

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is day two in
3 the deposition of John Bowen Ross, Jr. Today's
4 date, October 23, 1998. Appearing on behalf of
5 the plaintiffs, Jon Ferguson, William P.
6 Nicholson, Cherie K. Durand, Natalie Manzo, Roger
7 Adelman.

8 Appearing on behalf of the defendants,
9 Paul G. Crist, John W. Phillips, Ram Padmanabhan,
10 Aaron H. Marks, Craig E. Proctor. Also present,
11 Douglas Klote.

12 On the record at 9:59:05.

13 EXAMINATION BY COUNSEL FOR DEFENDANT
14 R.J. REYNOLDS TOBACCO COMPANY (RESUMED)

15 BY MR. CRIST:

16 Q. Good morning, Mr. Ross.

17 A. Good morning.

18 Q. I trust you had a comfortable evening.

19 A. So-so.

20 Q. I'm sorry. When we ended yesterday
21 afternoon, we had had a brief discussion of an
22 article written by Dr. Gio Gori that appears at
23 page LGM 239, what was marked I believe as Ross
24 Deposition Exhibit 2, the big book. And I
25 indicated to you that we would come back to that

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1 in part because of some confusion in my mind
2 about the sequence of events. And so that's
3 where we're going to start.

4 I would like to ask that this be marked
5 as the exhibit next in order.

6 (JBR Exhibit No. 12 was
7 marked for identification.)

8 BY MR. CRIST:

9 Q. Mr. Ross, I have handed you a copy of
10 what has been marked as Ross Deposition Exhibit
11 12 which I should note for the record was also
12 marked as Exhibit 6042 in Mr. Meyer's deposition
13 and appears to be a memo from Dr. Mold to you
14 dated April 2, 1976. Do you see that?

15 A. Yes.

16 Q. And would you have received this, sir,
17 in the ordinary course of business?

18 A. Yes.

19 Q. The memo refers, does it not, to a
20 meeting between Dr. Mold and Dr. Bates with
21 Dr. Gio Gori at or shortly before April 2, 1976?

22 A. Yes. It appears to be.

23 Q. And in fact, if you look at the subject
24 line, it refers -- it reflects that the meeting
25 was on April 1 of 1976.

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1 A. Yes.

2 Q. And that was approximately eight months
3 before Dr. Gori's article was published in
4 Science magazine which as I believe you pointed
5 out is dated December 17, 1976.

6 A. Yes, this.

7 Q. And there is no reference no Dr. Gori's
8 article, is there, to the XA cigarette?

9 A. I haven't read it carefully, but I
10 didn't see it.

11 Q. You certainly do not recall at the time
12 that Dr. Gori or anybody else had made any
13 scientific statement with respect to the XA
14 cigarette, do you?

15 MR. NICHOLSON: Objection, lacks
16 foundation, assumes facts not in evidence.

17 THE WITNESS: Well, from just glancing
18 at this memoranda from Dr. Mold to me, it would
19 appear that they met with Gori under the auspices
20 of a confidentiality agreement. Therefore, if
21 Dr. Gori honored their agreement, which
22 apparently he did, he would not make reference to
23 the project until we told him to.

24 BY MR. CRIST:

25 Q. Did you ever tell him to?

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1 A. I don't know what they told him. This
2 meeting actually took place before the so-called
3 task force was organized. So they obviously did
4 this with my blessing because the one they
5 prepared the confidentiality agreements.

6 Q. And, when you say it was prepared
7 before the task force was organized, the task
8 course you're referring to is the Liggett task
9 force, right?

10 A. Yes.

11 Q. Because the National Cancer Institute
12 program had actually been ongoing since 1968?

13 A. Well -- they -- I'm talking about
14 Liggett's task force, I don't know what tasks
15 force were out there other than ours.

16 Q. Well, you knew that the NCI program had
17 been ongoing since about 1968?

18 A. Several years, I don't know how long.

19 MR. CRIST: Mr. Ross, I've -- let me
20 ask that this be marked as the Exhibit 1, ma'am.

21 (JBR Exhibit No. 13 was
22 marked for identification.)

23 BY MR. CRIST:

24 Q. Mr. Ross, I have handed you what's been
25 marked as Ross Deposition Exhibit 13 which

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1 appears to be a November 19th, 1976, memo from
2 Dr. Mold to you. Do you recognize it as such?

3 A. Yes.

4 Q. It refers, does it not, to a meeting
5 between Dr. Kensler and Dr. Mold on the one hand
6 and Dr. Gori and Dr. Lynch of the National Cancer
7 Institute on the other hand?

8 A. I'm trying to read it, but it would
9 appear to be that.

10 Q. Okay. Where you see the subject line,
11 conversation with Dr. Gio Gori and Dr. Neal Lynch
12 at the National Cancer Institute, correct?

13 A. Yes.

14 Q. And the first line refers to the fact
15 that Dr. Mold and I, referring I assume to the
16 author, Dr. Mold, met with the above gentlemen in
17 Dr. Gori's office, correct?

18 A. Yes.

19 MR. BOSTWICK: You're saying correct in
20 the sense that that's a correct reading of that
21 or that he recalls that that happened?

22 BY MR. CRIST:

23 Q. Correct in that that's what this
24 document that he received in the ordinary course
25 of business says. Okay.

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1 Do you recall, sir, that there had --
2 there was a second meeting with Dr. Gori to
3 discuss with him the XA cigarette prior to the
4 publication of his article in Science magazine on
5 December 17th, 1976, which appears at page
6 LGM 239 of the big book which I think was Ross
7 Deposition Exhibit 2.

8 MR. NICHOLSON: Objection, lack of
9 foundation.

10 THE WITNESS: Do you want me to go back
11 to this book here?

12 BY MR. CRIST:

13 Q. I just asked, do you recall that there
14 was, in fact, a second meeting with Dr. Gori
15 before his article was published?

16 MR. NICHOLSON: Objection, lack of
17 foundation.

18 MR. BOSTWICK: Independently, apart
19 from the -- refresh his recollection.

20 THE WITNESS: If I didn't have this
21 memo in front of me, I would not have recalled
22 this.

23 BY MR. CRIST:

24 Q. Does this memo refresh your
25 recollection with respect to that?

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1 A. Yes, it does.

2 Q. Now, with respect to this memo that
3 Dr. Mold is sending to you, one of the things
4 that he reports is that the National Cancer
5 Institute would test through inhalation the XA
6 cigarette if Liggett would support the study
7 financially to the extent of a million dollars.
8 And I refer you to the second page and the first
9 full paragraph. Do you see that there, sir?

10 A. Yes.

11 Q. Do you recall that having come up at
12 the time?

13 A. No.

14 Q. Do you recall, sir, that Liggett was
15 hoping that the National Cancer Institute would
16 test the XA cigarette?

17 A. My recollection is that, if they were
18 willing to test it, we would probably fund it.
19 Again you're talking about inhalation tests.

20 And that's just a hoop you jump
21 through, they've never really been able to do
22 anything with inhalation tests that shows other
23 than the fact that the -- the subjects, whether
24 it be dogs or mice or rats or whatever, their
25 lungs get irritated and that's about it.

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1 Q. Your point being is that inhalation
2 tests had been consistently negative with respect
3 to any cancer endpoint?

4 A. As far as I'm aware, I don't ever
5 recall anybody developing a cancer in -- in the
6 animals', test animals' lungs by inhalation of
7 smoke.

8 Q. And, indeed, Liggett's own testing
9 through inhalation also was negative with respect
10 to cancer endpoints?

11 A. That's correct.

12 Q. And they did it both in the sixties and
13 they did it again in connection with the XA,
14 correct?

15 A. Well, they -- I don't know what they
16 did in the sixties. In regard to the project,
17 they would run a 30-day inhalation test, I don't
18 know why they decided on 30 days, but that seemed
19 to be the protocol at the time, to see if there
20 were any unusual effects created by this
21 particular cigarette smoke as opposed to, let's
22 say, control cigarettes.

23 Q. And that 30-day test showed that there
24 was essentially no difference, correct?

25 A. That's correct.

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1 Q. Do you recall, sir, that the inhalation
2 tests were, in fact, extended out I believe to
3 two years?

4 A. I don't recall that. It could be.

5 Q. Give me just a second.

6 While I'm looking for this, sir, do you
7 recall that Liggett declined to fund the NCI test
8 of the XA cigarette?

9 MR. NICHOLSON: Objection, lack of
10 foundation.

11 THE WITNESS: Well, I'll put it this
12 way, I don't recall ever being discussed that we
13 spend a million dollars for them to go and do an
14 inhalation experiment.

15 BY MR. CRIST:

16 Q. From time to time, sir, you actually
17 participated in efforts to construct estimates of
18 sunk costs, did you not, with respect to the XA?

19 A. Generally just ballpark figures, yes,
20 say 9 million for -- which was close that we had
21 paid Kensler or ADL over some years and 5 million
22 of our own R&D. How they isolated this out I
23 don't really know, but they were the figures
24 battled around.

25 Q. And, with respect to your calculation

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1 of sunk costs, there was never a time in which
2 you included any expenditure to fund research by
3 the NCI, correct?

4 MR. NICHOLSON: Objection, lack of
5 foundation, misstates the record.

6 BY MR. CRIST:

7 Q. I'm sorry, go ahead. I'm just puzzled
8 by that objection.

9 MR. NICHOLSON: Well, he didn't say he
10 calculated the costs, he said --

11 THE WITNESS: You'll have to rephrase
12 that question, I'm not sure I understand it.

13 BY MR. CRIST:

14 Q. When you did reconstruct sunk costs
15 with respect to the XA at Liggett, you never
16 included any amounts for expenditures at the
17 National Cancer Institute to test the XA, did
18 you?

19 MR. NICHOLSON: Same objections.

20 MR. BOSTWICK: And prior to the answer,
21 can I simply get a clarification of sunk costs?
22 Is it s-u-n-k, is that what you're --

23 MR. CRIST: Yes.

24 MR. BOSTWICK: Perhaps he understands
25 it, but his lawyer doesn't.

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1 BY MR. CRIST:

2 Q. Sunk costs mean money spent.

3 A. I understand that part.

4 MR. BOSTWICK: Okay.

5 THE WITNESS: What I don't understand
6 is you're talking about money -- you were asking
7 whether or not the money -- that sunk costs
8 included NCI money --

9 BY MR. CRIST:

10 Q. Right.

11 A. -- is that right?

12 Q. Right. And they never did, did they?

13 MR. NICHOLSON: Same objections.

14 THE WITNESS: I'm not really -- I
15 don't -- I can't answer with any degree of
16 certainty as to what they paid NCI over the
17 years. I don't whether it was included or not
18 included.

19 BY MR. CRIST:

20 Q. And you don't know if they even paid
21 NCI any amount, correct?

22 A. While I was with the project, I don't
23 recall them paying NCI anything.

24 Q. And you were with the project from 1976
25 until 1983, right?

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1 A. You might say I was with the project a
2 little bit earlier than that because I was aware
3 of what was going on as far as a task force
4 thing. The task force really started in the
5 summer of '76 and I guess it kind of more or less
6 petered out in the last meeting I have in my
7 notes which was '83.

8 Q. Right. And the federal government shut
9 down the NCI program in 1978, didn't it, do you
10 remember that?

11 A. I think you referred to that
12 yesterday. And I think I was probably aware of
13 that.

14 Q. We talked -- switching gears a little
15 bit now, sir, we talked at the end of the day
16 yesterday, too, about the issue of the -- whether
17 or not selcomine or the cobalt in selcomine
18 transferred into the smoke.

19 A. Yes.

20 Q. And I indicated to you that we would
21 also come back to that today.

22 Let me ask that this be marked as the
23 exhibit next in order.

24 (JBR Exhibit No. 14 was
25 marked for identification.)

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1 MR. NICHOLSON: Counsel, I don't
2 believe I have either one of those.

3 MR. PHILLIPS: I can give you mine.

4 MR. CRIST: That's the second one.

5 MR. PHILLIPS: These are different.

6 MR. CRIST: Mr. Ross, may I ask to have
7 those returned just for a second, there is some
8 confusion with respect to the numbering on these
9 exhibits.

10 What has been marked as Ross Deposition
11 Exhibit 14 is an April 1, 1975, memo from
12 Drs. Kallianos and Dr. Walker to Dr. Mold.

13 Do you have that?

14 MR. NICHOLSON: No, I do not.

15 (JBR Exhibit No. 15 was
16 marked for identification.)

17 MR. CRIST: What has been marked as
18 Exhibit 15 is an April 22, 1979, memo from J. F.
19 Williams to Mr. Ross.

20 Here's a copy of that one.

21 And let me ask that this be marked as
22 the exhibit next in order.

23 (JBR Exhibit No. 16 was
24 marked for identification.)

25 MR. NICHOLSON: I do have that last

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1 one.

2 MR. CRIST: I apologize, I thought I
3 had given you all these this morning.

4 BY MR. CRIST:

5 Q. Mr. Ross, I've handed you what have
6 been marked as exhibits to this deposition 14,
7 15, and 16. Let us start, if we can, with
8 Exhibit 14. That appears to be a memo dated
9 April 1, 1975, from Drs. Kallianos and Walker to
10 Dr. Mold. Have you ever seen this before, sir?

11 A. If I've seen it, it was probably in a
12 stack of other material. I don't recall
13 specifically seeing it. I could have used part
14 of this memoranda to -- it could have been used
15 to help prepare the patent application. I don't
16 really know, I don't have any specific
17 recollection of ever having seen it.

18 Q. Yesterday I asked you a question which
19 was based in part on some language on page 6.
20 And let me just invite your attention to that, at
21 the bottom of the page, the last paragraph, the
22 third sentence, since salcomine is a powder, some
23 transfer of salcomine in smoke is likely.

24 I use that as a springboard, sir, to
25 ask you now if you'd turn with me to Ross

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1 Deposition Exhibit 16 which is a memo from a
2 G. F. Hunt to you dated September 2, 1977,
3 correct?

4 A. It appears to be.

5 Q. Do you recognize it as such?

6 A. Well, the memorandum says from G. F.
7 Hunt to me.

8 Q. Do you know who Mr. Hunt is or
9 Dr. Hunt?

10 A. I don't know whether I made the comment
11 yesterday to the group or to Dwight specifically,
12 but I was amazed, and I remarked on this more
13 than one time, it seems like every time, once a
14 month, I would go down to the lab and run into
15 somebody I'd never met before. I accused Mold of
16 hiding these people in the woodwork and this Hunt
17 is one of them, I don't know where he was or
18 where he came from.

19 Q. Do you recall, sir, having known in
20 1977 that Liggett had tested for transfer of
21 cobalt into the smoke of the XA cigarette?

22 MR. NICHOLSON: Counsel, I'm going to
23 object. It's a little confusing to be simply
24 because of the accommodation of two documents
25 here. But there's been no foundation to the

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1 first document. So, to the extent that your
2 questions rely or relate in any way to the first
3 document which is JBR 14, I object based on the
4 lack of foundation and also assuming facts not in
5 evidence.

6 THE WITNESS: I was aware that they
7 were going to testify for transfers of cobalt in
8 other things that may cast a negative impression
9 on the product. We were trying to get all the
10 information available so if, in fact, somebody
11 later said, hey, you're putting cobalt into
12 cigarettes, we would say, yeah, but it doesn't
13 transfer or it transfers in such small quantities
14 it doesn't make any difference; in other words,
15 so we would have an answer to these questions.

16 BY MR. CRIST:

17 Q. Well, as I understand it, sir, Liggett
18 was concerned about the fact of transfer and --

19 A. What?

20 Q. About the fact of transfer and about
21 the fact of the public perception of transfer.
22 There were twin concerns, were there not?

23 A. Well, they were certainly concerned
24 about the public's view of the transfer. If
25 you'll look here at the amounts apparently being

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1 transferred, you're talking to what, 4.2 to 20
2 nanograms which as we said yesterday is one
3 billionth -- a nanogram is one billionth of a
4 gram.

5 Q. Well, isn't it true that benzopyrene is
6 only present in nanogram quantities in smoke as
7 well?

8 MR. NICHOLSON: Objection, lack of
9 foundation.

10 THE WITNESS: I thought benzopyrene
11 would be present in -- certainly in micrograms
12 and milligrams.

13 BY MR. CRIST:

14 Q. Milligrams?

15 A. I'm not sure. I'd have to see some
16 test results of it. It certainly -- my
17 recollection it was a whole lot more than the
18 nanogram quantity.

19 Q. Turn with me, if you would, to Ross
20 Deposition Exhibit 15. This is or appears to be
21 a memo from Mr. or Dr. Williams to you dated
22 August 22, 1979. Do you know -- do you recognize
23 it as such?

24 A. Yes.

25 Q. Do you know who Mr. or Dr. Williams is

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1 or would you tell us?

2 A. I was generally familiar with him.
3 Again, he was one of the people down there that I
4 had little contact with.

5 Q. The third paragraph reads -- it starts
6 with the first sentence at least reads, Using the
7 foregoing approach, the salcomine has been
8 determined in the smoke of five prototype
9 cigarettes with salcomine treated carbon filters,
10 correct?

11 A. That's what it says.

12 MR. BOSTWICK: In other words, I just
13 want to clarify, you're not asking him to verify
14 that as a scientific statement, you're just
15 asking him did you read that correctly?

16 BY MR. CRIST:

17 Q. I read it correctly and you knew about
18 it at the time, correct?

19 A. I would say I did know about it at the
20 time.

21 Q. Liggett's own testing, therefore,
22 confirmed that, in fact, there was transfer of
23 cobalt or salcomine into the smoke aerosol of the
24 XA cigarette?

25 MR. NICHOLSON: Objection, misstates

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1 the record and lack of foundation.

2 THE WITNESS: This was one of the tests
3 that they were doing to see if it would be a good
4 idea to include salcomine in the -- to coat the
5 charcoal with salcomine in order to remove NOXs
6 or whatever else they were trying to get rid of.

7 It doesn't mean that they -- it meant
8 that they did it on a test basis. You've got to
9 remember that, since no -- other than later on --
10 they at this stage of the game had not decided
11 what kind of filter they were going to have,
12 whether it was going to be all salcomine coated
13 charcoal or 50/50 or none. And they were trying
14 to decide what the trade-offs would be.

15 If you, in fact, just have two or three
16 nanograms of salcomine being transferred for one
17 thing, they didn't -- although salcomine is a
18 cobalt compound, you've got to look and see
19 whether or not the compound actually being
20 transferred is -- could be harmful.

21 BY MR. CRIST:

22 Q. Did Liggett ever do that?

23 A. Whether or not they did that particular
24 thing, I don't know. But they did test for the
25 transfer of salcomine; i.e., cobalt in the smoke

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1 stream.

2 Q. And they've confirmed that with the
3 charcoal -- the salcomine treated charcoal filter
4 that salcomine or cobalt was transferred?

5 A. In nanogram quantities.

6 Q. Right. They did not, however, test the
7 toxicity of that?

8 MR. NICHOLSON: Objection, misstates
9 the record, lack of foundation.

10 THE WITNESS: They probably did test
11 the toxicity as it relates to inhalation
12 studies.

13 BY MR. CRIST:

14 Q. And when did they do that, sir?

15 A. I say probably did at some point in
16 time. They had several inhalation studies. And
17 I would assume that one of them would have been
18 to see if this salcomine treated charcoal did
19 anything to the treated animal that you wouldn't
20 normally expect. And the result of that is I
21 don't recall them ever seeing any marked increase
22 or decrease in the sacrificed animals as opposed
23 to control.

24 Q. With respect to what?

25 A. As opposed to control.

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1 Q. With respect to what?

2 A. To the -- whether you noticed any
3 difference in the -- say the lung tissue of an
4 animal that had breathed smoke from a -- that was
5 extracted from a cigarette having a charcoal
6 cavity with salcomine as opposed to a regular
7 cigarette with no -- say, no carbonate all.

8 Q. Well, in fact, there was no difference
9 between the results on the inhalation tests?

10 A. That's what I'm saying. My
11 recollection is they could never see any
12 difference in this for whether you used salcomine
13 coated charcoal or not.

14 Q. Now, Liggett also tested and
15 determined, did it not, that palladium
16 transferred into the smoke stream? Let me just
17 do this, let me withdraw that question.

18 Let me ask you to turn, if you would,
19 to what was marked as Ross Deposition Exhibit 1
20 which are your notes. And I believe it's in
21 front of Mr. Bostwick there. And I ask you to
22 turn to page 140. Do you see there, sir, in the
23 middle, where it says palladium amount in smoke
24 equals four to five nanograms per cigarette,
25 paren, high value, close paren?

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1 A. Yes, I do.

2 Q. So you knew as of the date that these
3 notes were prepared, September 23, 1977, that
4 palladium was transferred into smoke?

5 MR. NICHOLSON: Objection, lack of
6 foundation misstates the record, assumes facts
7 not in evidence.

8 THE WITNESS: I was impressed with the
9 fact that they could determine nanogram
10 quantities of palladium.

11 BY MR. CRIST:

12 Q. It's impressive that anybody is able to
13 measure nanogram quantities of anything, isn't
14 it?

15 A. Right. In my mind it was.

16 Q. Right.

17 A. So they said they came up with 4.51 one
18 billionth of a troy ounce, I found that rather
19 incredible.

20 Q. The chemical constituent identification
21 technology that was employed with respect to the
22 analysis of cigarette smoke really advanced the
23 state of the art with respect to being able to
24 measure nanogram quantities, didn't it?

25 A. It certainly did, because the last I

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1 heard there was some 4,000 different compounds
2 that had already been identified in cigarette
3 smoke.

4 Q. And those were -- many of those were in
5 the nanogram and femtogram range, weren't they?

6 A. Certainly nanogram range.

7 Q. There are -- are you aware, sir, of any
8 indications at Liggett that the amount of
9 palladium transferred into the smoke of the XA
10 prototype cigarettes was in the microgram range?

11 A. I never recall seeing that -- that high
12 of a value.

13 Q. You indicated yesterday that you had
14 reviewed the Meyer deposition. Did you also
15 review the Meyer deposition exhibits?

16 A. Did I?

17 MR. BOSTWICK: I did not provide him
18 with the Meyer exhibits as such. There may have
19 been some Meyer exhibits --

20 MR. CRIST: Okay.

21 MR. BOSTWICK: I don't think he knows
22 which are the Meyer exhibits versus which are the
23 other documents.

24 MR. CRIST: Okay.

25 MR. BOSTWICK: And that's why I'm

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1 interjecting now.

2 MR. CRIST: I'm not going to take the
3 time to find the document, but I mean, there was
4 an exhibit which was marked in Mr. Meyer's
5 deposition. I just wouldn't want the record to
6 think that I'm making this up.

7 MR. BOSTWICK: Right.

8 BY MR. CRIST:

9 Q. So -- and that doesn't call for a
10 response by you, sir.

11 A. Thank you.

12 MR. PHILLIPS: I think the objection
13 assumes facts in evidence.

14 MR. CRIST: I know, that's what I was
15 going to say, it assumes facts in evidence.

16 Let me also ask that this be marked as
17 the exhibit next in order.

18 (JBR Exhibit No. 17 was
19 marked for identification.)

20 BY MR. CRIST:

21 Q. Mr. Meyer, yesterday I asked you some
22 questions with respect to --

23 MR. NICHOLSON: Counsel, could you just
24 tell me where you're at?

25 BY MR. CRIST:

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1 Q. Well, yesterday, Mr. Meyer, I asked you
2 some questions with respect to --

3 MR. NICHOLSON: Wait. Are you talking
4 to Mr. Ross or are you reading from the
5 deposition? That's why I'm confused.

6 MR. CRIST: I'm not reading from the
7 deposition.

8 MR. NICHOLSON: You said Mr. Meyer.
9 That's why I'm confused by that.

10 MR. CRIST: Oh, I'm sorry. I keep
11 doing that. I keep thinking Meyer exhibits. In
12 fact, I marked some Meyer exhibits as Ross
13 exhibits today and I think I noted one but I
14 didn't note another, so I've got that on the mind
15 about screwing that up. And I apologize.

16 MR. NICHOLSON: Oh, no problem.

17 BY MR. CRIST:

18 Q. Mr. Ross, yesterday I asked you some
19 questions which related to whether or not there
20 was any smoking and health research activity
21 within Liggett after the time that Mr. LeBow
22 acquired it and there was an objection which was
23 lodged on the basis that I was assuming facts
24 that were not in evidence -- in fact, contrary to
25 the evidence.

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1 So I've handed you the transcript or a
2 portion of the transcript of the testimony of
3 Mr. LeBow. And my references were to pages 2372,
4 2373, and 2374. I don't intend to ask you any
5 further questions about this. But I didn't want
6 you to think that I was making it up.

7 MR. BOSTWICK: That doesn't call for a
8 response.

9 BY MR. CRIST:

10 Q. Mr. Meyer -- Mr. Ross -- Mr. Ross --

11 MR. NICHOLSON: Sir, just before you go
12 on, as long as you've done that, you want to just
13 read one question and answer from this, it's on
14 page 2373. And the question is: Is the answer
15 to my question, during the entire time you've
16 been at the helm, sir, you've never told anyone
17 at Liggett to invest in technology and to try and
18 develop a less hazardous cigarette? Answer: Up
19 until recently, that was true.

20 Just so the record is clear.

21 MR. CRIST: Well, so the record is
22 clear, in fact, you knew, 2372, lines 1 through
23 6, In fact, you know there was a door of Liggett
24 that had a label on it called R&D, or research
25 and development, you knew that, right?

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1 Answer: I knew that research door, as
2 you call it, is strictly research into the
3 various blends of tobacco, nothing to do with
4 health.

5 Line 22, question and answer. And you
6 don't know -- even know the name of a single
7 Liggett scientist during the entire period of
8 time you owned this company, right?

9 Answer: I don't think we had a single
10 scientist in Liggett during the time I owned it
11 that was involved in health issues. I don't
12 think we had one.

13 Page 2374, line 8 --

14 MR. BOSTWICK: I've allowed both you
15 and Mr. Nicholson to kind of go forth on this. I
16 don't know that this necessarily relates to
17 Mr. Ross. And since he's here now, why don't we
18 move on.

19 MR. CRIST: I agree.

20 MR. NICHOLSON: I agree as well.

21 MR. CRIST: Let me ask that this be
22 marked as the exhibit next in order.

23 (JBR Exhibit No. 18 was
24 marked for identification.)

25 MR. NICHOLSON: Counsel is this the

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1 transcript portion marked?

2 MR. CRIST: It was marked.

3 MR. NICHOLSON: What was the exhibit
4 number?

5 MR. PHILLIPS: You didn't mark this as
6 an exhibit number?

7 MR. CRIST: Yeah. Ross 17.

8 BY MR. CRIST:

9 Q. Mr. Ross, I've handed you what has been
10 marked as Ross Deposition Exhibit 18. This is
11 dated April 9, 1984, which is after you were I
12 think you described it yesterday out of the loop
13 on the XA project, correct?

14 MR. NICHOLSON: Counsel, I could object
15 and ask for clarification. You mean was he out
16 of the loop after this, before this time, or are
17 you asking him about the date on it or both?

18 BY MR. CRIST:

19 Q. Let me just do it differently.

20 Mr. Ross, do you remember having seen
21 this document in the ordinary course of business?

22 A. No.

23 Q. I bring it to your attention, sir,
24 because yesterday we discussed the issue of
25 whether or not Liggett had the capacity for

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1 testing for nitrosamines. And if you will turn
2 with me to page 2. It's item 4b, but only the b
3 appears on this page. And do you see there, it
4 says in the first sentence, we cannot now analyze
5 for nitrosamines?

6 MR. NICHOLSON: Objection, lack of
7 foundation, assumes facts not in evidence.

8 THE WITNESS: That's what it says. I
9 cannot -- now, that doesn't mean they couldn't
10 always. That means as of that date they
11 couldn't. And I have no idea of whether they
12 could or whether they couldn't.

13 BY MR. CRIST:

14 Q. You have no idea whether they could or
15 couldn't before that date?

16 A. I pretty well believe they could
17 before.

18 MR. NICHOLSON: Objection, misstates
19 the record.

20 (Discussion off the record.)

21 THE WITNESS: I never saw the actual
22 apparatus that would test for nitrosamines. That
23 doesn't mean they didn't have it. They had it --
24 obviously they had access either internally or
25 through ADL or someplace else to analyze the

1 nitrosamines way back when because that was the
2 first thing they looked at, was what sort of
3 nitrosamine levels are in this thing.

4 BY MR. CRIST:

5 Q. Well, the first thing they looked at
6 was what sort of NOX levels were generated?

7 A. Well, it depends on which project
8 you're looking at. If we're talking about this
9 project, it was primarily -- if you didn't -- if
10 you had a reduction in nitrosamines, that
11 identified a compound that could be useful. NOX
12 levels is different.

13 Q. But you didn't have a compound which
14 reduced nitrosamines, you had a compound which
15 increased nitrosamines, correct?

16 MR. NICHOLSON: Objection, misstates
17 the record.

18 THE WITNESS: No.

19 BY MR. CRIST:

20 Q. The nitrates increased the
21 nitrosamines, did they not?

22 A. I believe that's correct. But
23 nitrosamines as I recall are part -- or one of
24 the compounds in the PCAH fraction. And I was
25 under the impression that the nitrosamines PCAH,

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1 were they bad actors in the biological testing.
2 And, in order to come up with compounds that
3 would reduce the PCAH; i.e., nitrosamines I guess
4 you would lump in that group. Then we did a lot
5 of testing in order to find out. And, of course,
6 somebody had to determine the level of
7 nitrosamines and PCAH in there.

8 Q. Let me make sure I understand, sir,
9 your understanding. You think nitrosamines and
10 PAHs are the same thing?

11 MR. NICHOLSON: Objection, misstates
12 the record, lack of foundation.

13 THE WITNESS: Not the same.

14 BY MR. CRIST:

15 Q. You think the nitrosamines are part of
16 the PAH family of compounds?

17 MR. NICHOLSON: Objection, misstates
18 the record.

19 THE WITNESS: I believe -- I think so.
20 As I recall, that was one of the compounds in the
21 PCAH that we wanted to reduce.

22 BY MR. CRIST:

23 Q. Isn't it true, sir, that Liggett was
24 gravely concerned about the nitrosamine levels
25 resulting from the high nitrates that were used

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1 in the XA prototypes?

2 MR. NICHOLSON: Objection, assumes
3 facts not in evidence.

4 THE WITNESS: I don't know -- one of
5 these -- I don't know, it could be me that are
6 confused. They were concerned with NOXs as a
7 result of increased nitrate levels.

8 BY MR. CRIST:

9 Q. And they were also gravely concerned
10 about the increased nitrosamines as a result of
11 the increased nitrate levels in the XA
12 prototypes, weren't they?

13 A. As of this day's date, I don't recall.
14 Obviously, if there was an increase in
15 nitrosamines, they would have been concerned
16 about it. They were definitely concerned about
17 the increased levels of NOXs. They were trying
18 to reduce the PCAHs, whatever fractions that that
19 contains, in the end product.

20 Q. Well, with respect to the NOXs, the
21 primary thing that Liggett looked at with respect
22 to reducing NOX was salcomine, right?

23 MR. NICHOLSON: Objection, assumes
24 facts not in evidence.

25 THE WITNESS: No, that's one of them.

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1 You've got to remember that we were still looking
2 for you might want to say, quote, the perfect
3 filter. You can reduce NOXs by a lot of other
4 ways than by salcomine treated carbon, you can --
5 dilution is a primary way, the type of acetate
6 you use in there. Dilution, air dilution. The
7 type of acetate you use in there.

8 Charcoal cavity does a good job by
9 itself without putting any salcomine in it. I
10 think at one time we decided maybe we ought to go
11 to a 50/50 salcomine carbon; in other words, 50
12 percent of the carbon was treated with salcomine
13 and the other half wasn't primarily for the
14 reason because salcomine is about four times as
15 expensive as untreated charcoal.

16 MR. CRIST: Let me ask that this be
17 marked as the exhibit next in order.

18 (JBR Exhibit No. 19 was
19 marked for identification.)

20 MR. NICHOLSON: Counsel, that's another
21 one I don't have. Is it the February 14th,
22 1980?

23 MR. CRIST: Yeah.

24 (JBR Exhibit No. 20 was
25 marked for identification.)

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1 BY MR. CRIST:

2 Q. Mr. Ross, I've handed you what have
3 been marked as Ross Deposition Exhibits 19 and
4 20. Ross Deposition Exhibit 19 is a memo from
5 Mr. Kersey to you dated February 14, 1980. Did
6 you receive this in the ordinary course of the
7 business to the best of your recollection?

8 A. Yes.

9 Q. Do you remember that one of the things
10 that Liggett looked at with respect to reducing
11 nitric oxide was a patent by BAT?

12 A. I vaguely remember that.

13 Q. Do you remember, sir, that -- was it
14 Dr. -- is it Mr. Kersey or Dr. Kersey?

15 A. Mr.

16 Q. Do you remember Mr. Kersey at the time
17 was the head of research?

18 A. That's correct.

19 Q. Do you remember, sir, that Mr. Kersey
20 contacted BAT to find out information with
21 respect to that patent?

22 A. He must have, because they wrote him
23 back and told him he didn't have enough to send
24 him.

25 Q. And he enclosed information with

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1 respect to preparation procedure for the material
2 which was referred to in the BAT patent, correct?

3 A. I've never seen this. I assume so, I
4 don't know.

5 Q. I'm sorry, you've never seen what has
6 been marked as Ross Deposition Exhibit 20?

7 A. That's correct.

8 Q. Sir, if you would turn with me to your
9 notes which are Ross Deposition Exhibit 1, I
10 believe. And turn with me to page 45. Do you
11 see there in the middle it says I believe --
12 well, why don't you just read it. Review the
13 contact with BAT in the -- what's that next word?

14 A. It looks like r-h-e --

15 Q. Okay. Well, we can't make it out. But
16 it goes on to say compound to reduce NOX in CO.

17 A. I might, if I looked at my original
18 notes, could figure that out. I can't from here.

19 Q. Okay. But you were aware in 1980 that
20 a contact had been made with BAT to find out more
21 about its patent to reduce NOX?

22 A. Right. As I recall this was -- it
23 looks like it was in preparation for our trip to
24 Europe.

25 Q. The -- we discussed yesterday the fact

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1 that -- at least I believe the record will
2 reflect that one of the people that was apprised
3 of the XA cigarette was Dr. Arthur Upton of the
4 National Cancer Institute. Do you recall that?

5 A. I believe that's correct.

6 Q. Do you recall that Dr. Upton made
7 inquiry with respect to whether or not Liggett
8 had conducted any Ames testing?

9 A. I remember some discussion about the
10 Ames test. Whether or not he requested it I
11 don't know.

12 Q. To the best of your recollection,
13 during the period of time that you were in the
14 loop with respect to the XA, Liggett did not
15 conduct any Ames testing on the XA prototype,
16 correct?

17 A. I don't recall them doing it.

18 MR. CRIST: Let me ask that this be
19 marked as exhibit next in order.

20 (JBR Exhibit No. 21 was
21 marked for identification.)

22 BY MR. CRIST:

23 Q. Mr. Ross, I've handed you what has been
24 marked as Ross Deposition Exhibit 21 which is a
25 November 12, 1976, memo from Mr. Walker that

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1 shows on the third page two extra copies going to
2 Mr. Greer. Do you recall, sir, whether or not
3 you saw this in the ordinary course of business?

4 A. I don't recall seeing this because it
5 makes mention subtitled Consideration of
6 Salmonella. I don't ever recall any work being
7 done concerning salmonella as it relates to the
8 smoke fraction. I don't ever recall seeing this
9 particular memo.

10 Q. Okay. But it is consistent with your
11 recollection that such testing, whether on smoke
12 of the XA or smoke fractions, was not done?

13 MR. NICHOLSON: Objection, misstates
14 the record.

15 THE WITNESS: Wait a minute. It's
16 consistent -- would you rephrase that.

17 BY MR. CRIST:

18 Q. Yeah. If you'll look at the summary --
19 by the way, is it Dr. Walker or Mr. Walker, do
20 you know?

21 A. I don't know.

22 Q. Okay. Do you see that in the summary
23 on page 1 by Mr. Walker he concludes, based on
24 the limited information available, the author has
25 serious doubt whether any intensive use of this

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1 method is critical to L&M purposes?

2 MR. NICHOLSON: Objection, lack of
3 foundation.

4 BY MR. CRIST:

5 Q. Do you see that sentence, sir?

6 A. I'm trying to figure out what he's
7 saying. I see it.

8 Q. Okay. Do you recall any discussions
9 about that at that time?

10 A. No.

11 Q. Okay. You can put that aside.

12 Let me switch gears again on you now.
13 That's always a good sign when that happens, so.

14 A. Can we quit?

15 MR. CRIST: Let me show you -- let me
16 ask that this be marked as exhibit next in
17 order.

18 (JBR Exhibit No. 22 was
19 marked for identification.)

20 BY MR. CRIST:

21 Q. Mr. Ross, I've handed you what has been
22 marked as Ross Deposition Exhibit 22. It appears
23 to be a memo from Mr. Ross, yourself, to Mr. Hill
24 dated February 17, 1976. And, if you look on the
25 last page which is page 8, it has what appears to

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1 be your signature. Is that your signature?

2 A. Yes, it is.

3 Q. And did you write this memo?

4 A. Yes, I did.

5 Q. Or on about the date that it is dated
6 did you write it?

7 A. It took me more than one day to write
8 it, but I did write it.

9 Q. Thank you. There came a point in time
10 in which -- and you testified about this
11 yesterday, but I want to take you back to it --
12 in which Liggett began to explore the
13 possibilities of licensing the XA cigarette,
14 correct?

15 A. Yes.

16 Q. And indeed you and others went overseas
17 for that purpose, did you not?

18 A. That's correct.

19 Q. Did you go on more than one trip?

20 A. Dr. Mold, Bob Seidensticker, and myself
21 went in I believe it was March of 1980 to Vienna,
22 Austria, Paris, and Hamburg, where we met with
23 the Austrian Tobacco monopoly, Seita which is the
24 French monopoly, and Reemstma Tobacco Company of
25 Germany. I believe Mr. Seidensticker and

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1 Mr. Toft and I went back to Hamburg at a later
2 time.

3 Q. That's -- the first company you visited
4 was the Austrian tobacco monopoly?

5 A. That's correct.

6 Q. You then went next to Seita, the French
7 tobacco monopoly?

8 A. Yes.

9 Q. I may be mispronouncing that, and I
10 apologize if I am.

11 A. That's as good as I can do.

12 Q. Okay. And then you thirdly went to
13 Reemstma in Germany?

14 A. Correct.

15 Q. Later Liggett also approached a South
16 African company by the name of Rustenberg
17 Platinum Mines, Limited, did it not?

18 A. Yes.

19 Q. And the discussion with Rustenberg was
20 about the possibility of a joint venture for the
21 purpose of taking the XA into some other country,
22 correct?

23 A. Correct.

24 Q. There was a time when Liggett also had
25 at least some exploratory discussions with the

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1 Japanese tobacco monopoly, Japan Tobacco & Salt,
2 correct?

3 A. Correct.

4 Q. And there was also, I believe, some
5 exploration of whether or not Imperial Tobacco
6 Company of the UK might be interested. Do you
7 recall that?

8 A. Yes.

9 Q. And there was also an exploration done,
10 I believe, by a Mr. Tiggleback of possible
11 interest in Canada of the XA cigarette?

12 A. Yes.

13 Q. Were there any other countries that
14 were approached or companies in other countries
15 that were approached?

16 A. Early on I think there was some
17 discussion as to whether or not Antone Rupert in
18 South Africa would have an interest in it.
19 Rupert knew about the project because at one time
20 I think he owned 10 percent of Liggett stock.
21 And --

22 Q. Mr. Rupert was a South African?

23 A. He was South African and was the owner
24 of the -- I believe they called it the Rembrandt
25 Tobacco Company.

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1 Q. Okay. Any other countries or
2 companies?

3 A. I don't believe so. There was some
4 discussion at one time I think later on, when we
5 were kind of grasping for straws, maybe we should
6 go to PM, maybe we should go to BAT, but it never
7 happened to the best of my knowledge.

8 Q. Neither PM or BAT was ever approached
9 with respect to a possible license of the XA
10 technology?

11 A. Not by me they weren't.

12 Q. And to your knowledge they weren't
13 approached by anybody at Liggett, were they?

14 A. I probably would have known about it.
15 Certainly, when I was in the loop, I would have
16 known about it.

17 Q. The -- and this discussion was
18 predicated on the idea that perhaps PM or BAT,
19 because of their international operations, might
20 be able to introduce this into a more hospitable
21 environment than the U.S., correct?

22 A. That's correct.

23 Q. Now, with respect to this -- go back to
24 your notes which are Ross Deposition Exhibit 1.
25 And turn with me to page 20.

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1 A. 20?

2 Q. Yes, sir. These are notes as I
3 understand it of the meeting between you and
4 Mr. Seidensticker in or on January 20, 1981?

5 A. Appears to be.

6 Q. And do you see there, sir, that you
7 record we no longer have any active license
8 prospects?

9 A. That's correct.

10 Q. And that is accurate as of
11 January 20th, 1981?

12 A. I would have to check the record to see
13 when the final note from Reemstma came to me
14 saying that they were no longer interested in the
15 project. I would imagine that I knew at the
16 time -- if I had not received that letter, I
17 probably knew at the time they weren't
18 interested.

19 But formally I don't know that I had
20 been notified. Reemstma would be the only one at
21 this stage of the game where anyone could have
22 shown interest.

23 Q. Reemstma found itself in a similar, if
24 not identical, situation because Germany also
25 prohibited any kind of health advertising at that

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1 time, did it not?

2 MR. NICHOLSON: Objection, lack of
3 foundation, misstates the record, assumes facts
4 not in evidence. And actually it's contrary to
5 the record.

6 THE WITNESS: I believe they had you
7 might say similar laws. I was told by them I
8 believe that -- that didn't seem to be as much a
9 problem as the fact that in Germany they treated
10 tobacco as a -- it was under the food category in
11 their scheme of things. In order to put things
12 in the cigarette, they had to be I think approved
13 by their food testing group.

14 BY MR. CRIST:

15 Q. There actually had to be a statutory
16 exception created for any nontobacco additive,
17 correct?

18 A. That sounds logical. But, as to your
19 question about advertising, I knew they had
20 problems. But whether or not they were identical
21 to our problems I don't know.

22 Q. Indeed, one of the reasons why
23 Liggett's primary targets were tobacco monopolies
24 and state-owned tobacco monopolies was because of
25 the hope that they might have greater flexibility

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1 with respect to advertising claims than in the
2 United States, right?

3 MR. NICHOLSON: Objection, lack of
4 foundation and ambiguous.

5 THE WITNESS: Well, look at it this
6 way, a tobacco monopoly will make its own rules.
7 If they want it, they will figure a way to do
8 it. If they don't want it, of course, they don't
9 have to go through -- they don't have to go to
10 the trouble to justify what they're trying to
11 do. Definitely it would be easier to go to a
12 monopoly than go to a company in a country that
13 had similar advertising and health laws that we
14 have.

15 MR. CRIST: Let me do this, let me
16 suggest that we take a break now. I during the
17 break will ask the court reporter to mark a
18 series of exhibits that we can go through quickly
19 and I'll probably have a couple of other short
20 areas to talk about with you.

21 THE WITNESS: Very good.

22 THE VIDEOGRAPHER: Off the record at
23 11:02:04.

24 (Recess.)

25 THE VIDEOGRAPHER: On the record at

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1 11:27:05.

2 BY MR. CRIST:

3 Q. Mr. Ross, during the break I pulled out
4 and left in front of you I believe a copy of what
5 was marked as Ross Deposition Exhibit 3. Is that
6 still right there?

7 A. Right here.

8 Q. The question I have for you, sir, is do
9 you recall having seen this in the ordinary
10 course of business at Liggett, this December 2,
11 1977, letter?

12 MR. NICHOLSON: Can we hold on for a
13 second, Counsel, just so I can get ahold of it.

14 BY MR. CRIST:

15 Q. It's the one we talked about this
16 morning.

17 A. Ready for my answer? I don't believe I
18 recall seeing this until this -- during my normal
19 course of business in 1977, I don't recall seeing
20 it. Obviously I've seen it since.

21 Q. Okay. Since leaving your employment
22 with Liggett?

23 A. Yes.

24 Q. Okay. You can set it aside, that's the
25 only question I had for you.

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1 (JBR Exhibit No. 23 was
2 marked for identification.)

3 BY MR. CRIST:

4 Q. What I'd like to do, Mr. Ross, is to
5 show you a series of exhibits which are all
6 related in subject matter. So I've had marked as
7 Ross Exhibit 23 this memorandum dated December 6,
8 1977, from you to Mr. Huckabee I believe.

9 Do you recognize it as such, sir?

10 A. Yes.

11 (JBR Exhibit No. 24 was
12 marked for identification.)

13 BY MR. CRIST:

14 Q. I'm handing you what has been marked as
15 Exhibit 24. It appears to be a memo dated
16 December 8, 1977, from you to Mr. Huckabee. And
17 do you recognize it as such?

18 A. Yes.

19 (JBR Exhibit No. 25 was
20 marked for identification.)

21 BY MR. CRIST:

22 Q. I'm handing you what's been marked as
23 Ross Deposition Exhibit 25. It appears to be a
24 memo dated December 14, 1977, from you to
25 Mr. Dey. Do you recognize it as such?

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1 A. Yes, I do.

2 MR. NICHOLSON: Counsel, would you have
3 an extra copy of what you marked as 23?

4 MR. CRIST: I don't. I gave you this
5 set this morning. We can get a copy made.

6 MR. NICHOLSON: That's 23?

7 MR. BOSTWICK: December 8?

8 THE WITNESS: That's 24. The 23 is
9 December 6, 1977. Number 25 is December 14,
10 1977.

11 (JBR Exhibit No. 26 was
12 marked for identification.)

13 BY MR. CRIST:

14 Q. I'm showing you what's been marked as
15 Ross Exhibit 26. It appears to be a memo from
16 you to Mr. Greer dated December 19, 1977. Do you
17 recognize it as such?

18 A. Yes.

19 (JBR Exhibit No. 27 was
20 marked for identification.)

21 BY MR. CRIST:

22 Q. I'm handing you what's been marked as
23 Ross Deposition Exhibit 27.

24 MR. BOSTWICK: You're trying to get us
25 to knock over this glass of water, right. It's

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1 going to happen.

2 BY MR. CRIST:

3 Q. I'm doing my best. The table is so
4 wide that it's difficult to get it to you. And I
5 apologize.

6 Sir, I'm handing you what's been marked
7 as Ross Deposition Exhibit 27, a memo from
8 Mr. Welsh to Mr. Dey dated December 20, 1977.
9 You're not indicated as having been an author,
10 addressee, or copyee on this document. Do you
11 remember, though, whether or not you saw it in
12 the course of your business?

13 A. I don't recall seeing it.

14 Q. Okay.

15 (JBR Exhibit No. 28 was
16 marked for identification.)

17 BY MR. CRIST:

18 Q. I'm handing you what's been marked as
19 Ross Deposition Exhibit 28.

20 MR. BOSTWICK: Can I just have one
21 moment to confer with Mr. Ross to -- I mean,
22 there's no question pending, right?

23 (Witness confers with counsel.)

24 MR. BOSTWICK: Thank you.

25 BY MR. CRIST:

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1 Q. It appears to be a memo from you to
2 Mr. Dey dated December 21, 1977. Do you
3 recognize it as such?

4 A. Yes.

5 (JBR Exhibit No. 29 was
6 marked for identification.)

7 BY MR. CRIST:

8 Q. I'm handing you what's been marked as
9 Exhibit 29. It appears to be a memo from you to
10 distribution dated August 28, 1978.

11 A. Yes.

12 Q. Do you recognize it as such?

13 A. Yes, I do.

14 (JBR Exhibit No. 30 was
15 marked for identification.)

16 BY MR. CRIST:

17 Q. I'm handing you what's been marked as
18 Ross Deposition Exhibit 30. It appears to be a
19 November 27, 1978, memo from you to Mr. Africk.
20 Do you recognize it as such?

21 A. Yes.

22 Q. There is a segment of this document on
23 page 1 that bears the stamp redacted. Do you
24 have any idea what was in that segment, sir, just
25 the subject matter of what was in there?

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1 A. It probably had to do -- since I don't
2 see anything having to do with the law
3 department, I assume that was the law department
4 section. It seems to cover everything else.

5 Q. Mr. Nicholson and I have compared
6 documents this morning and both of us have
7 redacted versions and we don't have unredacted
8 versions. So I just wanted the record to reflect
9 that we don't know of an unredacted version.
10 We're not trying to keep anything from you, we
11 just don't know of it, and certainly would
12 request it be made available, if Liggett, in
13 fact, has it in unredacted form.

14 (JBR Exhibit No. 31 was
15 marked for identification.)

16 BY MR. CRIST:

17 Q. Let me show you what's been marked as
18 Ross Exhibit 31. It appears to be a memo from
19 you to a Mr. Bob Ross at Engelhard dated November
20 15, 1979. Do you recognize it as such?

21 A. Yes.

22 MR. BOSTWICK: Let me make an
23 observation, if I might, about the last document
24 that was redacted. What exhibit was that?

25 MR. CRIST: 30.

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1 MR. BOSTWICK: 30. I assume, if it was
2 not redacted in this case, and that has our LG
3 number, it was probably redacted in the other
4 case, LIG. Do you see that Bates stamp number?

5 MR. CRIST: I do.

6 MR. BOSTWICK: Do we know what --

7 MR. CRIST: You're asking the wrong
8 person.

9 MR. BOSTWICK: Aaron, do we know what
10 case that would be?

11 MR. MARKS: I'm sorry, I don't believe
12 that the LIG number refers to a specific case.

13 MR. BOSTWICK: Okay. Then it's an
14 unhelpful observation.

15 (JBR Exhibit No. 32 was
16 marked for identification.)

17 BY MR. CRIST:

18 Q. Finally, let me ask hand you what's
19 been marked as Ross Exhibit 32. It appears to be
20 a memo from you to Mr. Welsh dated February 22,
21 1979. Do you recognize it as such?

22 A. Yes.

23 Q. These series of memos that we've gone
24 through, and I'll set aside the one that you do
25 not recall having seen in the ordinary course of

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1 business which was 27, all relate, do they not,
2 to the decision by Liggett to liquidate its
3 palladium inventory?

4 A. Correct.

5 Q. And that was a decision which was made
6 in 1977?

7 A. Yes.

8 Q. And indeed your notes are in Ross
9 Deposition Exhibit 1 at page 133 refer, do they
10 not, to that decision?

11 MR. NICHOLSON: Counsel, I'm going to
12 object for a minute. I have no problem with
13 trying to streamline this which I understand
14 you're trying to do. But, for instance, the last
15 two -- well, you spanned from '77 to '79. And I
16 think -- I don't know if there's one decision
17 made in '77 to liquidate that spans this entire
18 time frame or if that's what you're asking him
19 about, but I think it might be helpful to clarify
20 that.

21 MR. CRIST: And I thought you wanted to
22 go home.

23 MR. NICHOLSON: I do, I just don't want
24 the record to be inaccurate.

25 BY MR. CRIST:

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1 Q. Do you see that page, sir?

2 A. Yes, I do.

3 Q. And that relates, does it not, to a
4 decision to dispose of Liggett's palladium
5 inventory?

6 A. Yes.

7 Q. And that decision was made in December
8 of 1977 and then executed over the course of the
9 next several months, was it not?

10 A. Correct.

11 Q. And, if you look at what was marked
12 Ross Deposition Exhibit 31 --

13 A. Yes.

14 Q. -- on November 15, 1979, Liggett had no
15 palladium inventory, correct?

16 A. Apparently we did not have any
17 palladium inventory that was held by Engelhard,
18 we had some palladium in inventory.

19 Q. The palladium in inventory was
20 inventory which was held at Liggett?

21 A. Yes.

22 Q. That was inventory that was sufficient
23 for experimental cigarette purposes only?

24 A. Yes.

25 Q. With respect to the XA cigarette, its

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1 focus was upon mouse skin painting and reduction
2 of polycyclics in smoke, correct?

3 A. I'm sorry,.

4 Q. We're shifting years again, I'm sorry,
5 we're completely shifting gears and I apologize,
6 I told you we'd be doing that and I should have
7 raised my hand and said we're doing it.

8 The focus of the XA was solely with
9 respect to a possible cancer endpoint mouse skin
10 painting, right?

11 A. Right.

12 Q. The XA was -- project was not an effort
13 with respect to any cardiovascular disease
14 endpoint, was it?

15 A. No.

16 Q. Liggett did not testing to determine
17 whether or not the XA was better, worse, or
18 indifferent with respect to any cardiovascular
19 disease endpoint, correct?

20 A. I don't know how you would test it.
21 But my recollection is that it wasn't tested.

22 Q. Liggett -- strike that.

23 The XA cigarette was not designed to
24 have any effect with respect to any COPD -- well,
25 strike that.

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1 Do you know what COPD refers to?

2 A. I don't believe so.

3 Q. Okay. Have you heard the term
4 emphysema?

5 A. Uh-huh.

6 Q. And bronchitis?

7 A. (Witness nods head.)

8 MR. BOSTWICK: You have to answer
9 verbally.

10 THE WITNESS: Yes, I'm sorry, yes.

11 BY MR. CRIST:

12 Q. The XA cigarette was not designed with
13 any emphysema or bronchitis endpoint in mind, was
14 it?

15 A. That's correct, it was not.

16 MR. NICHOLSON: Counsel, before you go
17 on, could you just clarify what you mean by
18 endpoint.

19 MR. CRIST: I think the witness
20 understands. I'll be happy to discuss it with
21 you.

22 MR. NICHOLSON: It's difficult to
23 assess whether to make an objection or not if I
24 don't know what you're saying.

25 MR. CRIST: Well, I apologize for your

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1 lack of understanding.

2 MR. FERGUSON: Well, that's kind of a
3 smarmy response.

4 MR. CRIST: No, I don't know how on the
5 record to tell you -- how to explain it to you.
6 I mean, if you want to go off the record, I can
7 try to give you my understanding of it, we can
8 ask the witness his understanding of it. But for
9 you to ask me -- I don't know how I can make that
10 kind of a representation on the record, that's my
11 only problem.

12 MR. NICHOLSON: I'll be comfortable if
13 you could ask the witness his understanding so we
14 can have some kind of clarification.

15 BY MR. CRIST:

16 Q. You understand, Mr. Ross, that mouse
17 skin painting is a biological endpoint, correct?

18 A. Yes.

19 Q. That lung cancer through an inhalation
20 experiment would be a biological endpoint,
21 correct?

22 A. Yes.

23 Q. And the earlier testimony that we've
24 gone through is that Liggett was using mouse skin
25 painting as an endpoint, correct?

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1 A. That's true, because that's what the
2 NIH -- that was their protocol. And we were just
3 duplicating what they did.

4 Q. And Liggett also did some inhalation
5 studies but with respect to any kind of a lung
6 cancer endpoint, there wasn't any because there
7 was no lung cancer that was induced either by the
8 comparative cigarettes or by the XA, correct?

9 A. Not that I'm aware of.

10 MR. NICHOLSON: Counsel, you've given a
11 bunch of examples, and I won't speak up again,
12 but I will say that I'd like a continuing
13 objection as to this whole series of questions on
14 endpoint unless you give me some clarification as
15 to what you mean about that or ask the witness to
16 clarify what he means.

17 MR. CRIST: We just did.

18 MR. PHILLIPS: Why don't you just
19 assert an objection of ambiguity as far as this
20 is concerned.

21 MR. NICHOLSON: I've asked for that,
22 John.

23 MR. PHILLIPS: Why don't you give it.

24 MR. CRIST: Oh, sure, that's not a
25 problem.

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1 MR. NICHOLSON: Thank you.

2 BY MR. CRIST:

3 Q. And, with respect to -- well, strike
4 that.

5 Liggett did no testing of the XA
6 cigarette with respect to any emphysema or
7 bronchitis endpoint, did it?

8 A. Not to my knowledge.

9 Q. And indeed -- well, strike that.

10 Let me ask that this be marked as the
11 exhibit next in order.

12 (JBR Exhibit No. 33 was
13 marked for identification.)

14 BY MR. CRIST:

15 Q. Mr. Ross, I've handed you a copy of a
16 document or a collection of documents that have
17 previously been marked as Washington Exhibit 6445
18 as Ross Deposition Exhibit 33. I should note
19 that a part of this -- what I believe to have
20 been a complete document at the time which may
21 still be was marked at Mr. Meyer's deposition as
22 Exhibit 6052. This copy of the document was
23 provided to me by Mr. Nicholson.

24 Have you, sir, ever seen this document
25 or any part of this document before?

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1 A. I've certainly seen parts of it.

2 Q. Okay. Let's start, if we can, and walk
3 through it. The first page which has Bates
4 numbers ending 2762, have you seen that before?

5 A. No.

6 Q. What about the second page which is
7 2763?

8 A. I've seen -- the information contained
9 on that page I have seen. Whether or not I have
10 seen this particular page or not I don't know.

11 Q. Okay. What about the next two pages
12 which appear to be similar in substance?

13 A. My answer would be the same. I've seen
14 that general type of thing, but I don't recall
15 seeing those or not.

16 Q. 2766 through 2770 are documents that
17 you've seen before, correct?

18 A. Correct.

19 Q. And indeed copies of those are in your
20 notes?

21 A. That's correct.

22 MR. BOSTWICK: Well, to clarify, not
23 exactly in this form.

24 BY MR. CRIST:

25 Q. Okay. They're slightly different.

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1 Let's just take a quick look at that, if we can,
2 so the record is clear on it.

3 If you turn with me, sir, to Ross
4 Deposition Exhibit 1, beginning at page 114,
5 these are basically the same ads as in Ross
6 Deposition Exhibit 33?

7 A. Pretty much the same, yes.

8 Q. Okay. And, with respect to these --

9 MR. NICHOLSON: Counsel, let me just
10 note for the record that the writing is very
11 different.

12 MR. CRIST: I think that was
13 Mr. Bostwick's point.

14 MR. NICHOLSON: I just want to make the
15 record clear on that.

16 BY MR. CRIST:

17 Q. While we're -- having made that
18 point --

19 MR. NICHOLSON: And actually the
20 numbering is different too.

21 MR. BOSTWICK: The markups are
22 different as well.

23 MR. NICHOLSON: These numbers, one,
24 two, three, four, and the ones marked A, B, C,
25 D.

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1 BY MR. CRIST:

2 Q. With respect to the ones that are in
3 your book as Mr. Nicholson refers to it, Ross
4 Deposition Exhibit 1, are those annotations
5 yours, sir, the handwriting? Are those
6 annotation yours, sir?

7 A. The ones in the book are. The ones
8 here on the --

9 Q. Exhibit 33?

10 A. -- document, Exhibit 33, are not.

11 Q. Do you recognize whose handwriting it
12 is that appears on Exhibit 33?

13 A. No.

14 Q. Okay. With respect to your notebook,
15 sir, if you turn back just a couple pages to page
16 112.

17 A. 112?

18 Q. Yes, sir. Do you see there in the
19 middle of the page that records as I understand
20 it your view that you like advertisement E the
21 best probably because it doesn't say much?

22 A. Right.

23 Q. Let's go back to Exhibit 33. And I
24 think we're up to page 2771 and 2772. Have you
25 seen those before?

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1 A. I can't say for sure that I have
2 seen -- I think I have seen 2771. I can't be
3 sure that I have seen 2772.

4 Q. Okay. 2773 appears to be essentially
5 the same, if not identical to what we've already
6 talked about in 2763.

7 A. That's correct.

8 Q. Move forward to 2774. A copy of this
9 also appears in your notes, does it not?

10 A. I believe so.

11 Q. Did you write this, sir, or do you know
12 who did?

13 A. I don't believe I wrote it and I don't
14 really recall who did.

15 Q. Okay. The next page, is that something
16 with which you're familiar, 2775?

17 A. I'm not sure that I've ever seen that,
18 I don't recall.

19 Q. Okay. How about the ADL press release
20 at 2776 to 2777?

21 A. I've seen something like it. I don't
22 know that I've seen this particular document.

23 Q. Do you recall whether or not that you
24 saw something like it in the ordinary course of
25 business?

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1 A. Yes.

2 Q. Turn to page 2778. Let me just go back
3 a second to 2777. Is that your handwriting or do
4 you know who is it is?

5 A. It's not mine.

6 Q. Do you know whose it is?

7 A. No.

8 Q. 2778 is an article from Forbes
9 magazine. Have you seen that before?

10 A. Strangely enough I never recall seeing
11 this particular -- I don't know why I would not
12 have seen it, but I just don't recall ever having
13 read it.

14 Q. Okay. Next is a newspaper article from
15 Wichita Eagle, 2779. And you're indicated as
16 being a copyee on that. Do you recall having
17 seen that in the ordinary course?

18 A. Yeah, I might be confusing this with
19 the Charlotte Observer article, but I've seen
20 something -- I guess I've seen this particular
21 one, I'm not 100 percent sure.

22 Q. Okay. The next page, 2780, reflects
23 that Bob sent this newspaper article to you from
24 the American Medical -- Metal Market. Do you
25 recall that?

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1 A. Yes.

2 Q. 2781 is a LiggettGram dated
3 December 26, 1977?

4 A. That I do?

5 Q. Did you help write that?

6 A. No, I didn't. Joe Greer might have.
7 No, I wouldn't write that like that, I can assure
8 you.

9 Q. Next page is 2782, an article from the
10 Durham Morning Herald. Do you recall having seen
11 that in the ordinary course?

12 A. I'm sure I saw it, but I don't recall
13 seeing it, not the Durham paper.

14 Q. The next three pages are more newspaper
15 articles.

16 A. See, this is a filter -- wait a minute
17 now. Well, go ahead, I'm sorry.

18 Q. The next three pages, 2784 through
19 2786, are also newspaper articles. Do you recall
20 having seen those in the ordinary course?

21 A. I probably did. I don't recall right
22 now. But there's no reason why I wouldn't have.

23 Q. The next four pages, 2787 through 2790,
24 appear to be simply copies of what we've already
25 seen in this Exhibit 31 -- or 33.

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1 A. Okay.

2 Q. So let's move forward, if we can. 2791
3 through 2793, is that a document that you've seen
4 previously, sir?

5 A. I don't recall seeing that.

6 Q. At the bottom of page 2791, there's
7 some handwriting and it looks like A something
8 K. Do you recognize that or does it make any
9 sense to you?

10 A. I can't see it clear enough to be able
11 to -- let's see. K --

12 Q. If you look on the next page, 2792, it
13 looks like the same thing is there.

14 A. I see what you're referring to, but I
15 can't make it out.

16 Q. Okay. You don't recognize the
17 handwriting?

18 A. No.

19 (Witness confers with counsel.)

20 THE WITNESS: Possibly. My counsel
21 said one of our research scientists was a
22 Dr. Andy Kallianos. That says AK. It could be
23 his initials.

24 BY MR. CRIST:

25 Q. Okay. The last two pages, 2794 and

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1 2796?

2 A. That's what I have here, 24, I don't
3 know what happened to 25 to 95. It's not here.

4 Q. This is the way Mr. Nicholson gave it
5 to me, but I'm sure it was just an oversight.

6 MR. NICHOLSON: Thank you for your
7 generosity, Counsel, it was.

8 MR. CRIST: With the permission of
9 counsel, can I give him the 2795.

10 MR. NICHOLSON: Yes.

11 MR. CRIST: And we'll just insert it
12 into the exhibit.

13 MR. NICHOLSON: That would be fine. I
14 think I've got one.

15 BY MR. CRIST:

16 Q. Have you ever seen these three pages,
17 sir?

18 A. I don't recall seeing them.

19 Q. There is on 2794, in the upper
20 right-hand corner, what appears to be some
21 handwriting. Can you make that out?

22 A. No.

23 Q. It looks like it may be Kallianos, but
24 it's very difficult to determine.

25 Why don't we set this aside.

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1 Do you -- have you ever heard the name
2 William Farone?

3 A. Farone?

4 Q. Yes, sir.

5 A. I don't believe so.

6 MR. CRIST: Let me ask that this be
7 marked as the -- these be marked as the exhibits
8 next in order.

9 (JBR Exhibit Nos. 34 and 35
10 were marked for identification.)

11 MR. NICHOLSON: Counsel, are there
12 two?

13 MR. CRIST: Yeah, the Arch is 34.

14 MR. NICHOLSON: I didn't get Dietrich
15 Hoffmann's deposition but not the other one.
16 They're both Dietrich Hoffmann.

17 MR. CRIST: Just give me a second, Jon.

18 MR. NICHOLSON: Just let us --

19 MR. CRIST: Yeah, one sec.

20 I need to get you a copy, Bill, on the
21 second one. We'll take a break momentarily to do
22 that.

23 MR. NICHOLSON: Oh, okay.

24 MR. CRIST: Go ahead and say whatever
25 you want to say, Jon.

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1 MR. FERGUSON: Before you proceed with
2 this, Mr. Nicholson hasn't been in court.
3 Dr. Hoffmann, there were several references to
4 him in the opening in the Washington case.

5 There were then references to him
6 during cross-examination by the defendants and
7 the judge has stricken those references because
8 Dr. Hoffmann is an expert for the state on
9 smokeless tobacco issues. United States Tobacco
10 and smokeless tobacco counsel are out of the
11 case.

12 As a consequence, Dr. Hoffmann is not
13 testifying in Washington's case. That being the
14 case, this document is hearsay and we would
15 object to its introduction in the Washington
16 case.

17 MR. PHILLIPS: Let me just say for the
18 record that what was stricken was a reference to
19 Dr. Hoffmann as a state consultant or a state
20 witness. And obviously any substantive
21 objections are preserved. Objections to form are
22 appropriate at this point.

23 MR. FERGUSON: I just wanted it to be
24 clear that this portion of the deposition we
25 would assert an objection as hearsay as to this

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1 deposition.

2 BY MR. CRIST:

3 Q. Mr. Ross, I have handed you what have
4 been marked as Ross Deposition Exhibits 34 and
5 35. Ross Deposition Exhibit 34 is an excerpt
6 from Dietrich Hoffmann's June 19, 1997,
7 deposition in the case entitled Arch versus The
8 American Tobacco Company. Ross Deposition
9 Exhibit 35 is an excerpt from Dietrich Hoffmann's
10 June 24, 1997, deposition in the State of Texas
11 versus The American Tobacco Company.

12 My only question to you about these,
13 sir, is have you prior to today seen these --
14 strike that.

15 My only question for you, sir, is prior
16 to today have you been advised by counsel other
17 than your own personal counsel of Dr. Hoffmann's
18 testimony in either of these cases?

19 MR. BOSTWICK: Other than me.

20 BY MR. CRIST:

21 Q. Other than Mr. Bostwick.

22 MR. BOSTWICK: He said other than me.

23 THE WITNESS: I don't believe so.

24 BY MR. CRIST:

25 Q. It was not taken up with you by

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1 Mr. Nicholson?

2 A. I don't recall that he -- no.

3 Q. Nor by Ms. Durand?

4 A. No.

5 Q. Did they discuss with you prior
6 testimony of the state cigarette design expert,
7 William Farone?

8 A. I don't recall that name.

9 MR. CRIST: Why don't we take a break
10 now, I may be done, I may have just a few more
11 pieces, okay.

12 THE VIDEOGRAPHER: Off the record at
13 12:03:26.

14 (Recess.)

15 THE VIDEOGRAPHER: On the record at
16 12:28:13. This concludes tape 4 in the
17 deposition of John Bowen Ross, Jr. Off the
18 record at 12:28:28.

19 (Discussion off the record.)

20 THE VIDEOGRAPHER: This begins tape 5
21 in the deposition of John Bowen Ross, Jr. On the
22 record at 12:29:36.

23 BY MR. CRIST:

24 Q. Mr. Ross, I have just a few more
25 questions for you.

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1 If you'll turn with me to your notes
2 which have been marked as Ross Deposition Exhibit
3 1 and to page 186. I'm sorry, start with 192.

4 These appear to be notes dated November
5 10, 1976, of a meeting that involved both Liggett
6 as well as A. D. Little personnel.

7 A. I'm sorry. Yes.

8 MR. BOSTWICK: We're looking at the
9 drawings is why we're laughing.

10 MR. CRIST: I thought that was a pretty
11 good drawing to tell you the truth.

12 MR. NICHOLSON: Counsel, is it ADL or
13 Engelhard?

14 BY MR. CRIST:

15 Q. Is that --

16 A. It's Engelhard.

17 Q. I meant Engelhard, I apologize. A
18 meeting involving Engelhard and Liggett
19 personnel, correct?

20 A. What? I'm sorry, what's your
21 question?

22 Q. I had asked you before A.D. Little and
23 I don't believe any of those people are ADL
24 people?

25 A. No, they're not.

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1 Q. The meeting was between Liggett and
2 Engelhard personnel, correct?

3 A. That's correct.

4 Q. And there was a discussion evidently on
5 November 10, 1976 about a postponement and
6 termination after postponement of the XA project?

7 A. Yes.

8 Q. Do you recall that discussion, sir?

9 A. Well, I certainly recall discussing the
10 postponement and termination with them.

11 Q. And do you recall discussing that in
12 1976 with them?

13 A. That would be right after the second
14 test that came back that didn't show with a full
15 length of time a very positive result. And so we
16 started talking to them about trying to sell some
17 of the palladium that we had acquired in the
18 previous three months.

19 Q. So you were discussing even in 1976 the
20 disposition of palladium?

21 A. Yes.

22 Q. And this is more than a year -- well,
23 I'm sorry. It's almost a year before the first
24 patent issued?

25 A. Yes.

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1 Q. If you turn with me now to page 186,
2 your reference to a November 18th, 1976,
3 meeting.

4 A. Yes.

5 Q. Evidently those are -- well, strike
6 that.

7 The attendees at that meeting were only
8 Liggett personnel?

9 A. At this particular meeting here, it
10 would appear to be so.

11 Q. And there was again a discussion of not
12 going to the market in the spring and scrubbing
13 or delaying the project?

14 A. That's correct.

15 Q. Do you recall that discussion in any
16 more detail, sir?

17 A. I remember that we were talking about
18 delaying the -- since the second mouse painting
19 test didn't show what we thought it was going to
20 show, that we had better tone down the whole
21 project. I don't think scrubbing at that point
22 was an option considered to any great degree.
23 Obviously we talked about delay.

24 Q. Scrubbing, however, was discussed as
25 reflected in your notes?

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1 A. The word scrub, question mark, is in
2 the notes.

3 Q. And a question -- delay question
4 mark --

5 A. Question mark --

6 Q. -- is in the notes?

7 A. Right.

8 Q. Turn with me to page 181. And it
9 appears to refer to a December 10, 1976, meeting
10 of Liggett personnel?

11 A. It seems like 12/10/76.

12 Q. That's December 10, '76?

13 A. Yes.

14 Q. And you see the -- down below it says
15 Hogeland -- who is Mr. Hogeland?

16 A. He was the acting general counsel at
17 that time, he was a senior partner in Webster &
18 Sheffield. And, when Mr. Hill left in the spring
19 of '76, Mr. Hogeland took his place on an interim
20 basis. So he was wearing two hats, he was our
21 vice president and general counsel as well as the
22 senior partner in Webster & Sheffield.

23 Q. Down below that there's a question
24 raised, what is your cost if you scrub. Do you
25 see that?

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1 A. Yes.

2 Q. And is it goes on. Can you tell me
3 what the rest of that says?

4 A. If the palladium market went to hell,
5 we probably have some investor liability.

6 Q. I'm sorry. If you go back up, sir, it
7 says what is your cost if you scrub. And then
8 there's a dash.

9 A. Scrub, dash, Ed, 1 million plus \$1.75
10 per ounce to --

11 Q. Is that Ed or est?

12 A. Ed, E-d, Ed Parrish.

13 Q. And Mr. Parrish was?

14 A. He was kind of like Mr. Huckabee's loan
15 to the law department, to handle the flow of
16 documents in and out. Most of the minutes in the
17 meetings that were taken were taken by Ed
18 Parrish. And he would submit the minutes to me
19 for review and it would go out under my name.

20 Q. If you turn with me, sir, to page 171.
21 There is -- this appears to relate to a January
22 25th, 1977, meeting among Liggett personnel?

23 A. Yes.

24 Q. And, in the -- near the top there,
25 above that first line, it says want -- I believe

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1 want to pay interest on what they have put out
2 and have interest apply against principal 350 if
3 we scrub, correct?

4 A. Yes.

5 Q. Do you recall a discussion in January
6 25th, 1977, about scrubbing or possibly scrubbing
7 the XA?

8 A. Well, this was probably one of several
9 meetings. I normally didn't take my notes when I
10 had just a small group of people like this,
11 Huckabee, Parrish, Greer, and myself. For every
12 one that I put something like this in there,
13 there must have been ten meetings that were held
14 relating to the same subject that doesn't appear
15 at least here. It might appear elsewhere.

16 Q. So there might have been ten more
17 meetings in which there was discussion in '77 of
18 scrubbing this?

19 A. Arguably ten would be a good figure.

20 MR. NICHOLSON: Objection, misstates
21 the record.

22 BY MR. CRIST:

23 Q. Turning to a different subject, sir, if
24 you turn with me to your notes at page 52. Well,
25 let's do it again in chronological order, if we

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1 can. Let's start with page 77. This appears to
2 relate to a March 9, 1979, meeting among Liggett
3 personnel with respect to the XA?

4 A. Yes.

5 Q. Are there any who are not -- I can't
6 recognize all the names.

7 A. They're all Liggett employees.

8 Q. Okay. At the very bottom of that page,
9 it says no outside consumer testing.

10 A. Whatsoever.

11 Q. Whatsoever. As of March 1979, there
12 had been no outside consumer testing of the XA,
13 is that what this fairly means?

14 A. At that point in time, I don't believe
15 there had been.

16 Q. Was there ever any outside consumer
17 testing?

18 A. My memory is a little fuzzy on that. I
19 think there was, I think Seidensticker later on
20 more or less did it, but I'm not 100 percent sure
21 about that. I know we had several -- of course,
22 we were testing various blends and combinations
23 of filters and things like that internally pretty
24 much on a daily basis.

25 Q. If you turn with me, sir, back one page

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1 to page 76, is this, sir, a copy of the results
2 of one of the internal preference tastes,
3 preference or taste tests on the XA?

4 A. It would appear so.

5 Q. Do I read this correctly, sir, looking
6 at the top column, that, of the internal taste
7 panelists, that they preferred their regular
8 brands on taste 15 to one to the XA?

9 A. On that particular menthol cigarette, I
10 think that's probably what you're reading is
11 correct.

12 Q. And then they have other attributes as
13 well that are listed there comparing the regular
14 brand as opposed to the 30I. Do you see that?

15 A. Yes.

16 Q. And then, if you turn with me finally
17 page 52.

18 MR. BOSTWICK: I'm sorry, maybe this
19 will clarify it for you.

20 MR. CRIST: I'm sorry.

21 MR. BOSTWICK: You know -- you
22 understand that that's three different types,
23 three different examples of that?

24 MR. CRIST: I'm sorry, what? I don't
25 understand your comment.

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1 THE WITNESS: You've got three
2 different cigarettes here, three different blends
3 you're looking at and three different probably
4 filter combinations. And the first one is one to
5 15, the second one is three to five, the third
6 one is eight to five.

7 BY MR. CRIST:

8 Q. Well, let's do this if we can, let's
9 spend another minute or two on this document.

10 The -- it's divided into three separate
11 tests, correct?

12 A. Yes.

13 Q. The first one is comparing the 30I
14 which was a prototype cigarette against regular
15 brand, correct?

16 A. That would appear to be so.

17 Q. If we move down --

18 A. In menthol.

19 Q. In menthol, yes, sir. If we move down
20 to the next column, the comparison is between 17H
21 and 96H, both of which were prototype cigarettes,
22 correct?

23 A. They were prototype of a type of
24 cigarette. I have no knowledge whatsoever as to
25 whether they contained any sort of -- what the

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1 additives were, what the filters were, whether or
2 not it was an XA project or, you know.

3 Q. Okay. But they -- what we do know is
4 that they were not comparing a prototype with a
5 regular brand?

6 A. It would appear that they are comparing
7 17H, whatever that is, to 96H.

8 Q. Whatever that is?

9 A. Whatever that is, the same way down
10 below, with 27I to 24I.

11 Q. Right. And the last -- and the last
12 grouping is comparing 27I with 24I, correct?

13 A. At 100 millimeters.

14 Q. And there is no comparison there
15 between a prototype and a regular brand, is
16 there?

17 MR. BOSTWICK: Objection. He didn't
18 say -- I'm sorry, can you say that again.

19 BY MR. CRIST:

20 Q. Yeah, the question is, with respect to
21 the third set of results, there's no comparison
22 there between a prototype and a regular brand, is
23 there?

24 A. Well, I assume that, if they would have
25 had a regular brand, they would have said so. I

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1 have no idea what 24I and 27I -- what they are.
2 But they're comparing those two to each other.

3 Q. Well, the I series --

4 A. I --

5 Q. -- were a series of XA prototypes, were
6 they not?

7 A. I don't know.

8 Q. Turn with me finally --

9 A. I don't know when this was done. I
10 don't know who did it. I really can't give you
11 too much information on it.

12 Q. Okay. Well, sequentially it is in your
13 notes in about March of 1979, correct?

14 A. That's correct.

15 Q. Finally, turn with me to page 52. This
16 appears to relate to a meeting on January 17th,
17 1980, among Liggett personnel?

18 A. Yes.

19 Q. And the first entry that you have there
20 is Bob, is that Bob Seidensticker?

21 A. Yes.

22 Q. Gave results of taste tests which were
23 satisfactory; i.e., not a disaster?

24 A. Right.

25 Q. Do you recall that discussion, sir?

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1 A. Vaguely. We had -- Bob Seidensticker's
2 office and mine were in the same building. He
3 was on one floor and I was on another and then
4 later on we were on the same floor. So I talked
5 with him on many occasions.

6 And this particular occasion Mold,
7 Greer, and Kersey were there. And obviously
8 taste has always been a concern. And we were in
9 the process of trying to find a blend that would
10 be as pleasurable as a regular marketed
11 cigarette.

12 Q. Had you had prior taste tests, sir,
13 which were disastrous?

14 A. Well, when we first started, before
15 the -- I would say that the first taste test,
16 whatever that was, and since I didn't smoke at
17 the time I can't tell you from firsthand. But
18 apparently it wasn't all that great.

19 And that's why they spent a lot of time
20 and effort to improve the flavor so that it would
21 be more like one of our regular blends, like an
22 L&M or a Marlboro or -- Marlboro wasn't ours, but
23 like a Marlboro.

24 Q. Sir, did you -- do you recall, sir,
25 having heard descriptions of the taste of the --

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1 of any of the XA prototypes as being like
2 garbage?

3 A. Not that bad.

4 Q. What kinds of labels were applied --

5 A. Adjectives?

6 Q. Yeah, adjectives?

7 MR. NICHOLSON: Excuse me, Counsel.
8 Can I get clarification on what time period we're
9 talking about here.

10 MR. CRIST: The witness can help on
11 that, I can't.

12 MR. NICHOLSON: Okay.

13 THE WITNESS: Let me just say generally
14 speaking that, when they first started to build a
15 cigarette let's say, that tastes were not what we
16 considered to be a marketable cigarette. They
17 spent considerable time and effort both with
18 filters and with blends to improve the -- what we
19 call as a first impression.

20 In other words, the first puff, first
21 impression is the most important in smoking.
22 Once you get halfway through the cigarette, you
23 can kind of forget. So you have to have that
24 first impression that is satisfactory.

25 And I believe that they -- by the time

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1 they -- as of this date, 1980, they were very
2 close to having a cigarette that was marketable.

3 BY MR. CRIST:

4 Q. Have you, sir -- sir, I will mark this
5 as an exhibit, but I only have one copy right
6 now. There was an article that appeared in New
7 York Newsday on I believe February 28th, 1988,
8 entitled A Safer Cigarette and how it never made
9 it to market. And there are statements
10 attributed here on page 3 to Mr. Kersey whom you
11 knew, correct?

12 A. Yes.

13 Q. You knew Mr. Kersey?

14 A. Kersey, Bob Kersey.

15 Q. And he, in fact, became director of
16 research at Liggett?

17 A. He had been for some time in 1988. He
18 was. I don't know whether at that time he was
19 director of research or not.

20 Q. And let me just read to this -- I'm
21 going to -- when we mark it as an exhibit, the
22 record will reflect that I'm now trying at least
23 to do it right.

24 "For example, Robert Kersey, a Liggett
25 chemist specializing in flavoring problems who

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1 leapfrogged Mold and served as Liggett's research
2 director from 1975 until 1987, said the prototype
3 never tasted good. 'It never reached the quality
4 I thought was necessary,' said Kersey, who now
5 does consulting work for Liggett. Likewise,
6 Herman Bryant, one of the Liggett scientists
7 named in the original patent, says he wasn't
8 satisfied with the taste when he left the company
9 in 1979. He described it as a 'drying,
10 medicinal, harsh' taste."

11 Did they express those views to you,
12 sir?

13 A. No.

14 MR. CRIST: And I will mark this as an
15 exhibit, and I apologize, I only have one copy
16 here.

17 MR. NICHOLSON: What number will that
18 be, next in order?

19 MR. CRIST: Let's just take care of --
20 we'll mark this as an exhibit in a few minutes.

21 BY MR. CRIST:

22 Q. A couple of final things. We discussed
23 a few minutes ago, Mr. Ross, certain endpoints
24 that were or were not part of the Liggett XA
25 research program. Let me -- I want to return to

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1 that and conclude with some questions related to
2 that.

3 To your --

4 A. May I suggest you use the word
5 objectives rather than endpoints, it might help
6 me and it might help Mr. Nicholson.

7 Q. Yes. Let me just write that down so I
8 don't forget it. And, if I mess up, it's not
9 because I'm trying to.

10 To your knowledge, during the time that
11 you were in the loop with respect to the XA
12 project, did any federal governmental agency ever
13 endorse reduced response in a mouse skin painting
14 study as an objective that would permit one to
15 call such a cigarette a safer cigarette?

16 A. I don't recall that -- that any
17 governmental agency endorsed anything.

18 Q. Can you tell us whether or not any
19 state governmental agency ever endorsed reduced
20 mouse skin painting as an appropriate objective
21 that would allow you to call something a safer
22 cigarette during that period?

23 A. I would think not. I don't think a
24 state is qualified to make that judgment.

25 Q. Did any voluntary health organization

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1 ever state during that period that reduced mouse
2 skin painting was an objective that would permit
3 one to call a cigarette a safer cigarette?

4 A. I don't recall.

5 Q. Did any federal governmental agency
6 ever state that a cigarette with a reduced PAH
7 level was a safer cigarette during that period?

8 A. I can't testify to a certainty. It
9 would seem like to me, if they went all to the
10 trouble to show that a smoke condensate painting
11 on the back of mice showed cancer, it wouldn't
12 logically infer that, if it didn't show cancer,
13 that it would be better than if it did.

14 Q. My question to you is different from
15 that, though, sir. My question for you is
16 whether or not any federal governmental agency
17 ever stated publicly that a reduced PAH level
18 would allow one to call something a safer
19 cigarette?

20 A. Not to my knowledge.

21 Q. Did any state governmental agency ever
22 do so?

23 A. No.

24 Q. Did any voluntary health organization
25 every do so?

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1 MR. BOSTWICK: To his knowledge, all
2 these questions are to his knowledge.

3 BY MR. CRIST:

4 Q. Absolutely.

5 A. To my knowledge, I don't think so.

6 MR. CRIST: Let me ask that this be
7 marked in as an exhibit in order.

8 (JBR Exhibit No. 36 was
9 marked for identification.)

10 BY MR. CRIST:

11 Q. Mr. Ross, I'm handing you what has been
12 marked as Exhibit 36. And let me invite your
13 attention to the third page. In the left-hand
14 column, in the second paragraph, to point you to
15 what it is that I was reading from.

16 MR. BOSTWICK: I'm sorry, where is it?

17 MR. CRIST: It's on the third page,
18 Dwight, left-hand column.

19 THE WITNESS: Is that paragraph
20 beginning Some observers outside Liggett's --

21 BY MR. CRIST:

22 Q. I'm sorry, no, sir, it's the next
23 paragraph that follows. It's the third?

24 A. Third paragraph?

25 Q. Yes, sir.

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1 A. Do you want me to read it or what?

2 Q. No, sir. I just -- they asked to have
3 it marked as an exhibit and I've now had it
4 marked as an exhibit. But that's what I was
5 reading from here a minute ago.

6 The -- there are a number of documents,
7 Mr. Ross, which Mr. Nicholson and I have
8 discussed as to which -- and also with
9 Mr. Bostwick as to which we have discussed the
10 desirability of having you prepare an affidavit
11 or perhaps do another transcript just to identify
12 some of those documents as documents for
13 evidentiary purposes.

14 And, subject to that exception, with
15 respect to those particular documents as to which
16 I would like to have that done, I don't have any
17 further questions of you at this time. And I
18 want to thank you, sir. Off the record.

19 THE VIDEOGRAPHER: Off the record at
20 12:56:11.

21 (Discussion off the record.)

22 THE VIDEOGRAPHER: On the record at
23 12:57:03.

24 EXAMINATION BY COUNSEL FOR
25 DEFENDANT PHILIP MORRIS, INCORPORATED

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1 BY MR. PHILLIPS:

2 Q. Mr. Ross, again my name is John
3 Phillips, I represent Philip Morris, I'm from
4 Seattle, Washington, and I'm here in the State of
5 Washington case.

6 Mr. Ross, you testified earlier as I
7 understand it that at some point, I believe it
8 was in the 1980, there was an interest in
9 possibly licensing the XA project, correct?

10 A. Yes.

11 Q. And one of the things that you were
12 asked was a -- that Liggett considered broaching
13 possible licensing with Philip Morris and I think
14 BAT was what your notes reflect; is that correct?

15 A. In 1980, I don't know that it came up
16 then. It might have come up later.

17 Q. And I think your testimony was that, to
18 your knowledge no such overture was made to
19 either Philip Morris or BAT; is that correct?

20 A. Not that I recall.

21 Q. Okay. Now, I believe --

22 A. That was a little farfetched by the
23 way, that was kind of grasping at straws you
24 might say.

25 Q. Grasping at straws by Liggett you mean?

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1 A. Yeah.

2 Q. And why is that?

3 A. Well, it wasn't in -- the original
4 reason for going with this project is to increase
5 Liggett's sales. The obviously second reason is
6 we wanted to make some money. Well, if you can
7 disassociate the two -- it doesn't make any
8 difference how you make money, as long as you
9 make it.

10 But originally we wanted to do it
11 ourselves so we keep our employees employed and
12 then present this as something that might be an
13 alternative to a regular cigarette.

14 Q. I think you testified yesterday that,
15 with the exception of a passing remark by
16 Mr. Pepples at the Arizona Biltmore, you didn't
17 have any communications with any other
18 representative of any other tobacco company
19 regarding the XA project; is that correct?

20 A. That is absolutely right.

21 Q. And do you know of any other
22 discussions with any other domestic manufacturer
23 between Liggett and any other domestic
24 manufacturer of tobacco regarding the XA project?

25 A. No. I think that, had there been any,

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1 I would not have known, because I was opposed to
2 any sort of dissemination of information from the
3 company regarding this project in whatever form.
4 I thought it was highly confidential and our
5 proprietary property.

6 Q. But in any event --

7 A. I'm not saying it didn't happen. I'm
8 saying I wouldn't have known about it because
9 they would make sure I didn't know about it.

10 Q. You don't know of any conversations,
11 correct?

12 A. I can infer it, but I don't know it for
13 a fact.

14 Q. Now, you mentioned that one of the
15 reasons why you were interested for Liggett in
16 the commercial development of the XA cigarette
17 prototype was the possibility of gaining market
18 share, correct?

19 A. Correct.

20 Q. And I think there were some analyses
21 projecting possibly 12 billion cigarettes
22 initially for the XA cigarette, correct?

23 A. Well, you name the figure, but that was
24 about the minimum that was projected which would
25 be a 2 percent market share.

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1 Q. And I take it that, in gaining that
2 market share, you would have been taking away
3 sales from other manufacturers like Philip Morris
4 and Brown & Williamson?

5 A. Well, you've just got one pack coming
6 from somewhere.

7 Q. Well, I take it that the idea behind
8 this project was that, if there was a perception
9 that this product is less hazardous to the
10 consumer, that a health conscious consumer would
11 be drawn to the product; is that correct?

12 A. That's accurate.

13 Q. And be drawn away from Marlboro or
14 Camel or whatever, correct?

15 A. Uh-huh.

16 Q. I'm sorry, you're going to have to say
17 yes on the record.

18 A. Yes. Sorry.

19 Q. At the time Liggett was losing market
20 share, correct?

21 A. Yes.

22 Q. And the tobacco industry in the United
23 States generally was seeing a shrinkage in the
24 entire market, was it not?

25 A. Not at this particular point.

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1 Q. I think you were seeing fewer smokers.
2 No, let me rephrase that. You were seeing about
3 the same number of smokers, the same number of
4 cigarettes, but in an expanding population less
5 of a percent of the population were smoking?

6 A. They still had about 600 billion
7 cigarettes in the pool at roughly this time
8 frame.

9 Q. So you're seeing fewer smokers as a
10 percentage of the population?

11 A. Exactly.

12 Q. Now, was it your hope with this XA
13 cigarette, if it were to become commercialized,
14 that, if the perception was that it was less
15 hazardous or safer, that you might draw
16 ex-smokers back into the marketplace to use your
17 new cigarette?

18 A. I never recall having it phrased like
19 that. I think we were still looking at the total
20 pool of 600 billion and see what slice we could
21 get out of that pie.

22 Q. Now, when you were asked on direct
23 about the potential benefit to the consumer of
24 marketing the XA, you testified -- I tried to
25 take your words down. So bear with me if I got

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1 it wrong, but I hope I got it right. You
2 testified that it offered the possibility that in
3 the long run they would not develop cancer,
4 correct?

5 A. Accurate enough.

6 Q. Okay. Now, whether the XA offered such
7 a possibility we don't know, do we?

8 A. No, we don't.

9 Q. And that would have taken decades in an
10 epidemiology study to determine after long-term
11 use, wouldn't it?

12 A. Probably -- certainly more than one
13 decade, if not two.

14 Q. And I take it it would not have been a
15 benefit to the consuming public to market
16 something as safer or less hazardous if it really
17 wasn't safer, correct?

18 A. Well, you wouldn't want to make the
19 statement, no.

20 Q. Nor would you want the consuming
21 public --

22 A. To be deceived, no.

23 Q. And you wouldn't want the consuming
24 public to move from one cigarette to another
25 cigarette on the perception that it's less

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1 hazardous when, in fact, it's not less hazardous;
2 isn't that correct?

3 A. Correct.

4 Q. It wouldn't be a benefit to the public
5 if someone who stopped smoking because of a
6 concern for health and started smoking again with
7 the new product because he thought it was a safer
8 or less hazardous product, would it?

9 A. If that was the sole reason for
10 starting back. But I doubt that that's the case.

11 Q. But, if it was one of reasons and he
12 was operating under the perception that it was
13 less hazardous and it really wasn't, that
14 wouldn't be a benefit to the consuming public,
15 wouldn't it?

16 A. No, it wouldn't. It wouldn't be
17 objective in producing a cigarette that carried
18 that connotation.

19 Q. And both in late 1970, when you were
20 working on this project, the XA project, and
21 today for that matter, I understand your
22 testimony that you do not know if the XA would
23 have really been a safer or a less hazardous
24 cigarette, do you?

25 A. My opinion is that, based on the

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1 protocol used by the NCI, that it would be. I
2 don't know that for a fact and nobody can say
3 whether it is or whether it isn't because it's
4 never been produced and you don't go through the
5 ten plus years of smoking to find out.

6 Q. So your hope -- excuse me, I'm sorry?

7 A. Well, I would just say, if you look at
8 the data, based on the NCI studies, yes, it would
9 be arguably better than if you didn't do it at
10 all.

11 Q. But sitting here today we don't know
12 that, do we?

13 A. Well, you have you'll never know it
14 unless you start producing it and people start
15 smoking it.

16 Q. Well, the truth is you don't know if
17 the XA, if it were commercialized, would have
18 been as safe as certain other brands, do you?

19 A. Well, you want my opinion.

20 Q. I want to know what you know. You
21 don't know one way or the other, do you?

22 A. Nobody knows one way or the other on
23 that issue. But I would say that, if I had to
24 bet on it, I would bet that it would be better to
25 have smoked something like this than to smoke

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1 something that didn't have it in there.

2 Q. Would you be willing to bet a smoker's
3 life on that, Mr. Ross?

4 A. Smokers bet their life on it every day.

5 Q. Yeah, but would you be willing to?

6 A. Would I do it?

7 Q. Yeah.

8 A. I don't smoke.

9 Q. Would you be willing based on your
10 opinion to represent to a smoker that they would
11 be better off smoking the XA for purposes of
12 health consequences?

13 A. I think I could make that statement.
14 It would be better to smoke this as opposed to
15 smoking something else, if you're going to smoke,
16 yes.

17 Q. And you would want them to rely upon
18 that statement, sir?

19 A. They can look at the facts and make the
20 decision for themselves.

21 MR. PHILLIPS: Okay. No further
22 questions. Thank you.

23 THE VIDEOGRAPHER: Off the record at
24 1:07:30.

25 (Discussion off the record.)

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1 THE VIDEOGRAPHER: On the record at
2 1:09:35.

3 EXAMINATION BY COUNSEL FOR
4 DEFENDANT BROWN & WILLIAMSON
5 BY MR. PADMANABHAN:

6 Q. Good afternoon, Mr. Ross.

7 A. Afternoon.

8 Q. My name is Ram Padmanabhan and I
9 represent Brown & Williamson and the American
10 Tobacco Company which as you may know was merged
11 into Brown & Williamson in 1994.

12 Mr. Ross, do you recall in your direct
13 examination answering questions relating to a
14 comment that Mr. Pepples made to you at the
15 Arizona Biltmore in 1981?

16 A. Yes.

17 Q. Apart from that comment, did you ever
18 hear Mr. Pepples say anything else that you
19 believe related to the XA project?

20 A. No.

21 Q. After Mr. Pepples made that comment to
22 you, did you respond to him in any way?

23 A. No.

24 Q. Did you respond to him later on
25 afterwards?

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1 A. No.

2 Q. Did you ever relay his comments to any
3 of your colleagues or superiors?

4 A. I probably did.

5 Q. Do you recall to whom you may have
6 relayed those comments?

7 A. No.

8 Q. Do you recall why you may have relayed
9 those comments?

10 A. Well, just a general interest, how did
11 he know what we were doing. I could have --
12 since Bob Seidensticker -- there were other
13 Liggett people there. But I was with him at the
14 time. I could very well have made that comment
15 to him.

16 Q. Do you recall if Mr. Seidensticker
17 responded?

18 A. Like I say I don't recall making the
19 comment to him. And, therefore, I obviously
20 don't recall that he responded because I don't
21 know what I said much less what he said. Much
22 less what he said.

23 Q. Do you recall relaying his comments to
24 anyone who was superior to you at Liggett?

25 A. He was superior to me at Liggett.

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1 Q. Apart from Mr. Seidensticker.

2 A. I don't recall it.

3 Q. Okay. Did you ever record Mr. Pepples'
4 comments to you in a memo or letter of any sort?

5 A. No, of course not.

6 Q. Did you ever raise it as a meeting of
7 the XA task force?

8 A. Well, at that stage of the game, we
9 didn't have much of a task force. But I don't
10 think I would have.

11 Q. Okay. Did Mr. Pepples' comments cause
12 you to change your opinions about the advisability
13 of the XA project?

14 A. Of course not.

15 Q. Mr. Ross, do you intend to testify at
16 trial on any issues that were not raised with you
17 in your direct exam by Mr. Nicholson?

18 A. Do I intend to testify?

19 Q. At trial.

20 MR. BOSTWICK: Well, finish the
21 question, I'm sorry.

22 BY MR. PADMANABHAN:

23 Q. Do you intend to testify at trial on
24 issues other than those raised with you in your
25 direct examination by Mr. Nicholson?

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1 MR. NICHOLSON: I'm going to object,
2 this calls for speculation. He doesn't know what
3 I'm going to ask him at trial.

4 BY MR. PADMANABHAN:

5 Q. Have you been asked by Mr. Nicholson to
6 testify on other issues that were not raised with
7 you?

8 A. Other issues than what we were
9 discussing here? No.

10 Q. Other than what Mr. Nicholson raised
11 with you in your examination with him?

12 A. No.

13 Q. Mr. Ross, just one last area here.
14 Were you -- you were employed by Liggett at the
15 time Liggett filed suit against B&W for trademark
16 infringement?

17 A. That was around what, '84 or something
18 like that? I don't --

19 Q. Do you recall the lawsuit --

20 A. I recall, yes, I think I was employed
21 by Liggett at the time that they filed suit
22 against Brown & Williamson.

23 Q. Were you involved personally with any
24 aspect of the prosecution of that litigation?

25 A. No.

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1 Q. What, if anything, do you recall about
2 the claims that were involved in that case?

3 A. The only claim I really recall was the
4 trademark issue. And I think it had something to
5 do with the quality -- quality seal or
6 something. And it appeared that there could be
7 enough similarity between the two, between B&W's
8 and Liggett's, to cause confusion in the
9 marketplace.

10 Q. Do you recall anything else about that
11 litigation?

12 A. No.

13 MR. PADMANABHAN: I have no further
14 questions. Thank you for your time.

15 THE VIDEOGRAPHER: Off the record at
16 1:15:03.

17 (Recess.)

18 THE VIDEOGRAPHER: On the record at
19 1:36:26.

20 MR. CRIST: Mr. Ross, I believe that
21 the defendants have no more questions of you, but
22 I think some of them need to speak for
23 themselves.

24 Mr. Proctor.

25 MR. PROCTOR: I have no questions.

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1 MR. CRIST: Any other defendants
2 represented here?

3 Mr. Marks, on behalf of Liggett, do you
4 have any questions?

5 MR. MARKS: No, I do not.

6 MR. CRIST: Do the plaintiffs have any
7 redirect?

8 MR. NICHOLSON: State of Washington has
9 no redirect.

10 MR. CRIST: Anybody else have any
11 redirect?

12 No response on behalf of counsel here
13 today at this deposition.

14 Mr. Ross, we thank you.

15 Mr. Bostwick, I'm sorry, do you have
16 any questions of the witness?

17 MR. BOSTWICK: I have no questions of
18 the witness.

19 MR. ROSS: On behalf of counsel we
20 thank you, Mr. Ross, and then we'll potentially
21 reconvene in a few minutes after we do that
22 document sorting out.

23 THE WITNESS: Thank you.

24 MR. CRIST: Off the record.

25 THE VIDEOGRAPHER: Off the record at

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1 1:37:22.

2 (Whereupon, at 1:37 p.m., the
3 deposition in the above-entitled matter was
4 recessed, to reconvene at 2:45 p.m., this same
5 day.)

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AFTERNOON SESSION

(2:46 p.m.)

Whereupon,

JOHN BOWEN ROSS, JR.,

the witness on the stand at the time of recess,
having been previously duly sworn, was further
examined and testified as follows:

(JBR Exhibit Nos. 41-84 and 30A
were marked for identification.)

THE VIDEOGRAPHER: On the record at

2:46:12.

FURTHER EXAMINATION BY COUNSEL

FOR DEFENDANT R.J. REYNOLDS

BY MR. CRIST:

Q. Mr. Meyer, thank you -- Mr. Ross, I
keep doing that. I apologize.

Mr. Ross, thank you for your patience
with us. During the break Mr. Nicholson and I
have endeavored to go through the documents and
to roughly divide them into two sets, one which
has your name on them and one which does not.
And then you were kind enough to review those
during that break to identify those which would
have come across your desk in the ordinary course
and those which would not. We just need you to

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1 confirm that on the record.

2 We have marked during that break
3 exhibits beginning with wherever we left off up
4 to No. 84. And so we'll be going through those.
5 We have also marked during the break as JBR
6 Deposition Exhibit 30A another copy of what was
7 marked as John Bowen Ross Deposition Exhibit 30,
8 this one different only in the that it bears a
9 Washington exhibit number.

10 For purposes of the foundational
11 questions with respect to authenticity and with
12 respect to business records, we're going to
13 endeavor to shorten and do by shorthand by asking
14 you basically one question which is, can you tell
15 us whether or not you wrote or received either as
16 an addressee or a copyee of the first two sets of
17 documents that I'll be giving to you. Let me
18 start that over again.

19 The question will be whether or not in
20 the ordinary course of business you wrote or
21 received the document at or about the time that
22 it is dated. And we'll just simply go through
23 that and we'll ask you.

24 The first set that bear as best we can
25 tell your name as author or addressee or copyee

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1 have been previously marked as exhibits. And the
2 question, therefore, is with respect to -- and
3 we're doing these in chronological order on the
4 documents.

5 With respect to J. Bowen Ross
6 Deposition Exhibit 22, JBR Deposition Exhibit 12,
7 13, 16, 30, what was marked as Meyer Deposition
8 Exhibit 6046, JBR Exhibit 23, 24, 25, 26, 28, 29,
9 32, 11, 15, 4, 31, and 19, did you, sir, write or
10 receive those in the ordinary course of business
11 at or about the time they were written?

12 A. You want me to flip through these?

13 Q. Yes, sir, if you would. I think those
14 are the ones you already flipped through during
15 the break.

16 A. Shall I identify them as JBR 22?

17 Q. Just tell us yes or no with respect to
18 those as a set or individually, however you
19 prefer to do it.

20 A. Well, if this is the one I just went
21 through, then they came across my desk in the
22 normal course of business or I wrote it or I
23 received it. So yes.

24 MR. BOSTWICK: As to those documents.

25 THE WITNESS: As to these documents, I

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1 either wrote them, received them, or was copied
2 on them.

3 MR. NICHOLSON: In the normal course of
4 business.

5 THE WITNESS: In the normal course of
6 business.

7 BY MR. CRIST:

8 Q. Mr. Ross, there was also one document
9 that I had to pull out of the set because it
10 didn't have an exhibit number on it. It was
11 marked as a Meyer exhibit and I asked you about
12 it yesterday. But I don't have the exhibit
13 number at hand, but it is a January 16, 1979,
14 memo from you to Mr. Africk. I have the same
15 question for you, sir, with respect to that one.

16 A. It would appear that I wrote it this on
17 or about January 16, 1979.

18 Q. In the ordinary course of business?

19 A. My normal course of business.

20 Q. Sir, the second set of documents that I
21 have for you are documents which were not
22 previously marked as exhibits in this deposition
23 but which appear to have been written by you or
24 received by you as indicated as being an
25 addressee or a copyee.

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1 And the question that we have for you
2 is whether or not these are documents which you
3 wrote or received in the ordinary course of
4 business on or about the date that they are
5 written.

6 And they have been marked as JBR
7 Exhibits 37, 38, 39, 40, 41, 42, 43, 44, 45, 46,
8 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58,
9 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70,
10 71, and 72. And these were also documents which
11 I believe you were kind enough to review during
12 the break.

13 A. I have reviewed these documents and
14 they were either authored by me or directed to me
15 or I received a copy of the particular memo in
16 the normal course of business.

17 Q. At or about the time that they are
18 written?

19 A. At or about the time that they are
20 written.

21 Q. The final set has been subdivided into
22 three categories, and they are documents which do
23 not on their face have your name on them. And
24 you were also kind enough to review these and to
25 divide them into these three sets. Some of these

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1 were previously marked in this deposition, some
2 not.

3 With respect to the first subset are
4 documents which I believe you've indicated off
5 the record were documents which you would have
6 received or did receive in the ordinary course of
7 business. And I asked you -- at or about the
8 time they are dated. And I ask you, sir, if that
9 is correct. And they are JBR Exhibits 82, 81,
10 80, 76, and 74.

11 A. This particular document, JBR 76, does
12 have my name on it.

13 Q. The -- there was some question with
14 respect to that particular document, sir, whether
15 you would have received the attachment. And
16 that's why we've included it in that stack. Why
17 don't we do -- let's deal with that one first.
18 What's the number on that, sir?

19 A. 76.

20 Q. With respect to JBR 76, can you tell us
21 whether or not you received the attachment to the
22 cover page which I think is a buck slip?

23 A. Yes.

24 Q. In the ordinary course of business at
25 or about the time it's dated?

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1 A. I have to answer that two ways. One, I
2 should have -- but I don't believe I did.

3 Q. Okay. Why don't we set that aside and
4 let's return to the others.

5 A. The last one is this LiggettGram,
6 everybody got that.

7 Q. Okay. With respect to -- with respect
8 to the documents in that set, by number --

9 A. 82, 81, and 80 were questions and
10 answers raised during the meetings with Reemstma
11 in this case on or about September 24th, 1980.
12 And, since I attended those meetings, I think it
13 is safe to say that I had some involvement with
14 them and would they would have come across my
15 desk.

16 Q. So they were documents which you either
17 participated in writing or which you received at
18 or about the time in the ordinary course of
19 business?

20 A. Yes.

21 Q. And the same thing is true with respect
22 to the LiggettGram, you received that in the
23 ordinary course of business?

24 A. Yes.

25 Q. The second subset on this, sir, are

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1 documents which I believe during the break you
2 told us were documents that you do not recall
3 having received in the ordinary course of
4 business. And those -- and I've handed them to
5 you without reading the exhibit numbers. Could
6 you read the exhibit numbers into the record,
7 please.

8 A. Exhibit No. JBR 14 was dated 4/1/75.
9 It appears to be an internal R&D memo from
10 Dr. Kallianos and Walker to Dr. Mold. I do not
11 believe I would have received this at that time.

12 Q. Did you -- with respect to the others
13 that are in that stack, sir, would you just read
14 the number and say yes, that you did or no, you
15 did not.

16 A. JBR 21 --

17 Q. I don't think you need to identify it
18 further than that.

19 A. No. JBR 73 -- 73 was a memo to -- from
20 K. V. Dey to Mr. Greer outlining some marketing
21 objectives and strategies. I don't recall seeing
22 it. I should have seen it, but I don't recall
23 seeing it. I wasn't copied with it.

24 Q. With respect to the others, do you
25 recall having seen those? The next number is

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1 what?

2 A. 75. I don't recall seeing that. 78, I
3 don't recall seeing that one.

4 Q. The last subset of these, sir, are
5 documents which you indicated during a break I
6 believe were documents which you do not remember
7 whether or not you saw them at the time. And we
8 put a question mark, therefore, on them.

9 A. Yeah.

10 Q. My question to you is do you as you sit
11 here today not remember whether or not you
12 received these in the ordinary course of
13 business.

14 A. Document JBR 83 I do not remember
15 seeing.

16 Q. Okay. What about the next one?

17 A. JBR 84, I believe I did see this,
18 having to do with -- I was not copied on it, but
19 my name is mentioned in it.

20 Q. Okay. What about the next one, sir?

21 MR. NICHOLSON: Just before we move on,
22 you believe you did see it --

23 THE WITNESS: Yes.

24 MR. NICHOLSON: In the normal course --

25 THE WITNESS: In the normal course of

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1 business, I either saw it or was aware of it, one
2 or the other.

3 The JBR 79, I certainly should have
4 seen it. Whether or not I did I can't recall
5 exactly, but it should have come across my desk
6 in the normal course of business.

7 BY MR. CRIST:

8 Q. But you can't say one way or the other?

9 A. My recollection is such right now is
10 that I can't positively say that.

11 Q. Okay. What about the next one, sir?

12 A. Board presentation, JBR 77, I can
13 pretty well say I didn't see it because I would
14 have liked to have seen it.

15 Q. Sir, let me -- thank you for that. Let
16 me make a couple of observations, if I may, for
17 the record.

18 One is that the documents you've gone
19 through are documents which both Mr. Nick
20 Nicholson and which I wanted to have you go
21 through. And, in fact, they are mixed up,
22 there's no way that you can tell -- we didn't do
23 this on purpose, but there's no way for you
24 readily to be able to tell which ones I asked to
25 have reviewed and which ones he did.

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1 But, for purposes of the record, it's
2 important that the record understand that some of
3 the ones were ones he wanted in and some of the
4 ones were ones that I wanted in and sometimes we
5 both wanted to have you look at the same
6 document.

7 The second thing is, although we've
8 done some shorthand here with respect to some of
9 the foundational issues, that other objections
10 are nonetheless reserved, issues with respect to
11 relevance, perhaps within hearsay are still
12 reserved; is that correct?

13 MR. NICHOLSON: That's my
14 understanding, that this is -- nobody has waived
15 any arguments with respect to anything, this is
16 just meant to -- an effort to streamline the
17 process, if we can do it.

18 MR. CRIST: Okay. And then I think you
19 had one other thing you wanted to take up.

20 MR. NICHOLSON: Actually -- a few other
21 things. And I'll try to be brief and I say a few
22 others because I said one other thing the other
23 day and I was called on the carpet for it.

24 FURTHER EXAMINATION BY
25 COUNSEL FOR PLAINTIFFS

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1 BY MR. NICHOLSON:

2 Q. With respect to some of the documents
3 that you -- were in the maybe or the no stack,
4 you made the comment you do not recall. Is it
5 possible over time or, given additional review,
6 you may or may not -- you may recollect receiving
7 those?

8 A. Yes.

9 Q. And, if you could hand up the one
10 document that you put off to the side there or
11 actually does that fall into that category? What
12 is the number on that again, Mr. Ross?

13 A. JBR 76. I would believe I would have
14 seen this. I believe I did see it.

15 MR. NICHOLSON: Okay. That's all I
16 have.

17 MR. CRIST: Okay. Anybody else?

18 Okay. Thank you very much.

19 MR. NICHOLSON: Thank you very much,
20 Mr. Ross.

21 MR. CRIST: Have a safe trip.

22 THE WITNESS: Thank you.

23

24

25

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1 THE VIDEOGRAPHER: This videotape
2 deposition concluded at 3:06:47 and consists of
3 five videotapes.

4 (Whereupon, at 3:06 p.m., the taking of
5 the instant deposition ceased.)
6

7 _____
8 Signature of the Witness
9

10 SUBSCRIBED AND SWORN to before me this _____
11 day of _____, 19__.

12
13 _____
14 NOTARY PUBLIC

15 My Commission expires: _____
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CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA) ss.:

DISTRICT OF COLUMBIA)

I, **JAN A. WILLIAMS**, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Notary Public in and for

the District of Columbia

My commission expires: 03/14/2002